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THIRD ANNUAL REPORT

OF THE

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Board of Railroad Commissioners

OF THE

State of Montana

Year Ending November 30, 1910.

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Helena, Montana, Nov. 30th, 1910.
To His Excellency, HON. EDWIN L. NORRIS,
Governor of the State of Montana.

In accordance with Section 33, Chapter 37, Laws of 1907,
we have the honor to submit our Annual Report, containing
an account of all matters pertaining to this office for year
ending November 30th, 1910.

Respectfully,

THE BOARD OF RAILROAD COM-
MISSIONERS OF THE STATE OF
MONTANA.

E. A. MORLEY, Chairman.

B. T. STANTON,

D. BOYLE,

Commissioners.

PREFACE.

Statistics of railroads, such as heretofore have been published in this report, have been omitted for the reason that the publication of this data entails considerable expense, and for the further reason that the Interstate Commerce Commission's Annual Report of "Statistics of Railways in the United States," contains complete information, facts and figures on all railroads, which it is thought unnecessary to here duplicate.

For legal opinions on matters pertaining to this department, see report published by the Attorney General for two years ending November 30th. 1910.

All petitions, investigations, complaints or other proceedings before the Board, not fully disposed of on the 30th day of November, 1910, have not been mentioned in this report, but are carried over and will be included in Annual Report for 1911.

This book will be mailed to any one free upon application to the Commission.

TABLE OF CONTENTS.

	Page
PART I.	
Station and Train Service	1-27
PART II.	
Rates and Minimums	29-82
PART III.	
Train Accidents and Personal Injuries	83-99
PART IV.	
Demurrage	101-112
PART V.	
Miscellaneous	113-152

PART I.

BEFORE THE RAILROAD COMMISSION OF MONTANA.

In the Matter of Exclusive Passenger Train Service on the
Park Branch of the Northern Pacific Railway Be-
tween Livingston, Montana, and Gardiner
Montana.

J. W. Hulse, et al., Complainants.

vs.

Northern Pacific Ry. Co., Respondents.

Hearing, November 8th, 1909. Decided, December 1st, 1909.

REPORT OF THE COMMISSION.

Number 31.

HELD, that the present mixed train service, daily except Sunday, on the Park Branch of the Northern Pacific Railway Company, Livingston, Montana, to Gardiner, Montana, a distance of 54 miles, is not adequate passenger service for the people who are dependent upon said branch line for transportation to and from their homes to the county seat at Livingston, and connections at latter place with respondent's main line; and that the present mixed train service is not such as to fulfil the legal requirements of reasonable and proper accommodations of the public.

The petition in the above entitled matter alleges that the present mixed train service furnished by the respondent on the Park Branch of its railway system is inadequate and owing to the delays caused by switching freight at the various stations on said branch line, it is unable to maintain a reasonably regular schedule. Petitioners ask that a daily passenger train service be instituted. The answer of respondent alleges that to operate a daily passenger service on this branch during the closed Park season would result in a financial loss, that the revenue from such service during the closed season would not pay the expenses of operating the said daily passenger service.

A hearing was held at Gardiner, Montana, November 8th, 1909, and from the testimony and the evidence at said hearing,

it appears that there are 12 stations exclusive of Livingston on this line. It also appears from testimony that there is a population of about 4,000 people who are dependent on this branch for service. The contention of the respondent that the only reason for not furnishing daily exclusive passenger service to these people is that during the closed Park season it would not be profitable to the railway company. That is not, in the judgment of the Board one that is entitled to be taken into consideration separately from the total annual revenue from the said branch line. While we are without a complete statement of the earnings of this particular branch for a calendar year, we have, however, a statement showing earnings from some of the stations thereon. From these statements furnished by the comptrolling department of the Northern Pacific Railway Company, we learn that for 12 months from Sept. 1st, 1908, to August 31st, 1909, there were received and forwarded from three stations on this line, viz., Emigrant, Electric and Gardiner, 141,697,705 pounds of freight, on which the transportation charges were \$242,844.63, and in the same period there were sold from the said three stations 19,572 tickets for which the railway company received \$29,251.30. Notwithstanding the testimony of a witness who testified that so far as Electric is concerned the passenger traffic might as well be eliminated, the railway company's statement shows that in 12 months mentioned there were 4,987 tickets sold at Electric for which the railway company received \$4,764.80. It is stated that the earnings of an exclusive passenger train on this branch during certain months of the year, and considered separately, are not sufficient to justify operating said train, but why should this particular service be considered separately and by itself? Respondent operates this branch and its main line as one system, and it is not contended that the net earnings from this branch are not profitable. The present mixed train carries freight, express, baggage, live stock, mail and passengers. On account of the freight carried, it is a slow train, being often behind schedule time from thirty minutes to three hours, caused by switching freight cars out of and into said train, delivering and receiving local freight, etc. This uncertainty of schedule causes much inconvenience to passengers, particularly women and children who are compelled to wait at stations where there is nothing but a platform, or at

some stations an open box car during the most inclement season of the year.

When the only train operated by a railway company is a mixed train, passengers, being unable to ride upon any other train, are forced to incur risks and submit to inconveniences which do not exist upon exclusive passenger trains. That there is here a public demand for passenger service is shown by the fact that the passenger and baggage cars are attached to a freight train. The public character of railroad companies is apparent from the fact that they are clothed with a power to take private property through the exercise of the right of eminent domain, hence the duties they owe to the general public cannot be shirked or evaded. We are of the opinion that the annual revenue of the branch line both direct and indirect as a feeder for the main line, and taking into consideration the number of people dependent on this branch for service, justifies the demand of the petitioners for a daily exclusive passenger train.

In advance of these findings a letter was addressed to General Superintendent Nichols, on December 1st, briefly reviewing the testimony submitted at hearing Nov 8th, and recommending that daily passenger train service be inaugurated just as soon as necessary arrangements could be made, and to give it a fair trial for a time, but, if found later that the service was not justified, upon application of the respondent company, the Commission would re-open the subject for further hearing.

On December 9th, Mr. Nichols replied that the railway company would comply with our request, but that at the present time they were having trouble on account of switchmen's strike and would like to defer any arrangements until the difficulties were settled. To this the Commission requested that if possible the service be commenced not later than Dec. 20th, which would give the people an opportunity to do their holiday trading. This was concurred in by the Railway Company, and exclusive passenger train service was commenced Monday, Dec. 20th, to be continued until this Board has authorized its discontinuance.

THE BOARD OF RAILROAD COM-
MISSIONERS OF THE STATE OF
MONTANA.

Dated Dec. 30th, 1909.

(Signed) R. F. McLAREN, Secretary.

BEFORE THE RAILROAD COMMISSION OF MONTANA.

**In the Matter of Application by the Chicago, Burlington &
Quincy Railroad Company to Discontinue Operation of
Its Line Between Scribner, Montana, and Toluca,
Montana.**

Submitted March 31st, 1910. Decided April 9th, 1910.

REPORT AND ORDER OF THE COMMISSION.

Number 34.

WHEREAS, the Chicago, Burlington & Quincy Railroad Company, owns and operates a branch line of railroad in the state of Montana between the station of Toluca and the station of Scribner, a distance of about 79 miles, and thence extending westerly to Cody, Wyoming, and with a branch line extending to the south to various other points in Wyoming, and

WHEREAS, said railroad company filed with the State Board of Railroad Commissioners of the State of Montana, on April 1st, 1910, a statement and application setting forth in substance its desire to suspend operation over said line between the stations of Scribner and Toluca, on account of the want of population in the territory traversed, and the constant loss on account of the excess of operating expenses over revenue secured on this line, and

WHEREAS, the said company contemplates the construction of additional branch line of railroad the same to extend northerly from Scribner to a point on the Northern Pacific Railway Company's line at or near the station of Fromberg in the state of Montana, and

WHEREAS, the construction and operation of this last named branch line is made contingent upon the granting by the Railroad Commission of Montana of permission to suspend operation over the line between Scribner and Toluca, and

WHEREAS, this Commission on April 6th, 1910, inspected

said branch line between Toluca and Scribner and is also familiar with the proposed new line between Scribner and Fromberg, and

WHEREAS, in the month of April, 1908, certain residents of Billings, and the Billings Chamber of Commerce made application to this Board to grant permission to said railroad company upon the completion of the proposed line between Scribner and Fromberg, to suspend operation over the branch line from Scribner to Toluca, and

WHEREAS, from the visual observation and inspection of the territory effected by the proposed change in the line of operation, and being fully convinced that operation over the new proposed line will result in a better and more expeditious service to the public in the state of Montana, and will be greatly to the advantage of the business interests of Billings and other distributing points in the state of Montana.

NOW THEREFORE, in consideration of the premises, it is by this Board now ordered:

That said Chicago, Burlington & Quincy Railroad Company be and it is hereby granted permission to suspend train service upon said branch line between Toluca and Scribner, provided, however, that this order shall not be in force nor take effect until such time as the proposed new line between Scribner and Fromberg shall have been constructed and put in practical operation.

THE BOARD OF RAILROAD COM-
MISSIONERS OF THE STATE OF .
• MONTANA.

Dated April 9th, 1910.

(Signed) R. F. McLAREN, Secretary.

Subject: Reporting Passenger Trains.

W. F. Shannon,

vs.

Great Northern Railway Company.

Complainant is a resident of Glasgow, Montana, and reported to the Commission that the manner in which information was furnished by the defendant relative to delayed passenger trains was quite unsatisfactory. A representative of the Commission visited Glasgow and found that the insufficiency of the service complained of was due largely to a misunderstanding of the law, as well as the railway company's instructions to its employees. When this was made plain to parties whose duty it is to report trains for the information of the public, the difficulty was remedied and there has been no further complaint.

Subject: Passenger Train Service.

Warland, Montana, Residents of,

vs.

Great Northern Railway Company.

This complaint relates that under the present time card of the defendant, the only west-bound passenger train which stops at Warland is Number 43, due at that station 3:30 A. M., and at that hour there is no employee of the railway company on duty, and that it is impossible to ascertain whether or not the train is on time. When late, passengers are obliged to wait outside without any means of knowing when it will arrive, and that the service rendered by the defendant as above, does not constitute reasonable accommodations for the patrons of the defendant.

The petition asks that west-bound passenger train No. 3, which is due at Warland 1:50 P. M., be required to stop at that station so that complainants may take said train No. 3 to Libby, the county seat, arriving there at 2:32 P. M. and return to Warland on train No. 44, at 8:10 P. M. the same day.

The answer of the defendant in this case agrees to stop train No. 3 at Warland when there are passengers to or from that station, and this service was inaugurated November 1st, 1910.

Subject: Passenger Service.

Elkhorn, Residents of,

vs.

Northern Pacific Railway Company.

The Northern Pacific Railway Company owns and operates a line of railroad from Boulder to Elkhorn, Montana, and has trackage rights over the Great Northern from Helena to Boulder, the contractual agreement between the two companies providing that the Northern Pacific shall not handle any passengers while on Great Northern tracks.

The petitioners complained of the long delay at Boulder on account of being unable to ride on the Northern Pacific, thence to Helena and vice versa. Investigation showed that the most satisfactory means of remedying this difficulty, would be to change the time of the Northern Pacific trains running between Boulder and Elkhorn so as to make connections at the former with Great Northern trains to and from Helena. The Northern Pacific Railway Company was agreeable to our suggestion and effective August 14th, the time of these trains was changed so as to make connections at Boulder, and under this schedule the long delay and in fact all delay at Boulder was eliminated.

A later petition was presented dated October 15th, 1910, requesting that the service in effect prior to August 14th, be restored for the winter months, for the reason that at this season of the year, on account of the days being short, the train did not reach Elkhorn until after dark, making switching on the mountain dangerous, and that freight was necessarily left in the cars over night exposed to theft.

The Railway Company consented to the change for a winter schedule, and the old service was restored effective November 6th.

Subject: Passenger Train Service.

Wibaux, Residents of,

vs.

Northern Pacific Railway Co.

Under Time Table No. 32, effective August 14th, 1910, trains 7 and 8, formerly through trains to the Pacific coast, were discontinued west of Glendive, Montana, and under this arrangement passengers from Wibaux for points west of Glendive, must take train No. 7, arriving at Glendive 10:30 P. M., and remain there until 3:20 A. M. for No. 5. To overcome this inadequate service, the Commission requested the railway company to stop No. 3 at Wibaux, due there at 4:39 P. M., which permits passengers for stations west of Glendive to take this train through to their destination. This arrangement was made effective August 31st.

Subject: Benchland Station and Agency.

Benchland, Citizens of,

vs.

Great Northern Railway Company.

Complaint in this case set forth that the defendant had no depot or other station facilities at Benchland for the protection of passengers or property, and that freight shipments were being unloaded at any point between switches, some times on one side and some times on the other side of the track, and that the contents were very often damaged or destroyed by exposure, and at all times exposed to theft.

Investigation showed that the nearest agency to Benchland was Windham 6.1 miles west, and Hobson 10.8 miles east, that is, the distance between these two agencies was 16.9 miles. The revenue to the railway company on business to and from Benchland for the three months ending January 31st, 1910, amounted to \$11,444.55 or an average of about \$3,815.00 per month, in view of which, and the further fact that the country in that immediate vicinity was fast settling up, request was made upon the defendant to provide a depot and install an agent in charge, which was done, the station being opened for business August 26th.

Subject: Interchange at Piedmont.

Madison County, Residents of,

vs.

Northern Pacific Railway, and the Chicago, Milwaukee &
Puget Sound Railway Companies.

The main line of the Chicago, Milwaukee & Puget Sound Railway crosses at grade the Ruby Valley Branch of the Northern Pacific Railway at a point about midway between Renova and Whitehall on the Northern Pacific, and about one mile east of Piedmont on the C. M. & P. S. There are no facilities at this intersection for the transfer of either passengers or property, and the complaint in question asked that the defendants be required to establish and maintain a depot and other necessary arrangements made so that passengers might transfer from the line of one company to that of the other when so desired.

Section 3, Chapter 136, Laws of 1909, confers upon this Commission power and authority to require the installation of joint facilities when necessary to properly serve the public. This, after due notice and hearing has been had. The complaint in question was not in proper form and notwithstanding that there appeared to be insufficient travel to warrant the request, petitioners were advised that the Board would be pleased to take the matter under full consideration upon receipt of formal complaint setting forth the facts, but such action on the part of petitioners has not been taken, and the Commission's letter of August 19th to the Honorable M. M. Duncan, representing the complainants is unanswered. We therefore take it for granted that no other further action is desired.

Subject: Connections With C. M. & P. S. Railway at Lombard.
Helena, Citizens of,
vs.
Northern Pacific Railway Co.

Complaint was made to the Commission on July 12th, calling attention to the unsatisfactory connections between Northern Pacific and C. M. & P. S. passenger trains at Lombard Junction, and citing the fact that passengers from Helena and points intermediate with Lombard, desiring to reach the Judith Basin country, must leave Helena at 7:15 A. M., arriving at Lombard 8:58 A. M., and remain there until 4:01 P. M., for C. M. & P. S. train No. 6.

There is considerable travel between Helena and points on the C. M. & P. S., north of Lombard, and this long lay-over at the junction point could be reduced by stopping N. P. Train No. 4, leaving Helena at 11:38 and arriving at Lombard 1:07 P. M. The Northern Pacific Railway Company very kindly agreed to stop No. 4 at Lombard without the necessity of any formal action.

Subject: DeBorgia Station and Agency.

DeBorgia, Citizens of,
vs.

Northern Pacific Railway Company.

The residents of DeBorgia and vicinity presented petition praying that an agency be established at that station in view of the amount of business that was being done, and prospects for increases. The railway company was not of the opinion that it would be warranted in going to this expense, and considerable correspondence ensued by which it was shown that petitioners had a just cause for grievance, and entitled to these facilities. A depot building was constructed with an agent in charge, and the station opened for transaction of business June 21st, 1910.

Subject: Passenger Train Service, Paradise-St. Regis Cut-Off.

Various Petitions and Complaints,

vs.

Northern Pacific Railway Company.

With the completion of what is known as the Paradise-St. Regis cut-off of the Northern Pacific, approximately two years ago, the route between western Montana points and points in the Coeur d'Alene district was shortened about 150 miles, but over this cut-off, there was no passenger train service, the line having been built for the purpose of obtaining a lower grade than via the old route over the Evaro Mountain. All freight trains were handled over this cut-off, but passenger trains continued to use the line over the mountain, which was considerably shorter, but the grades much heavier. The result was that passenger travel must necessarily go via Missoula, thus traveling 150 miles further.

Numerous petitions and complaints were presented to this Commission by the residents of towns in western Montana, praying that some arrangement be made whereby passenger service would be established between Paradise and St. Regis, and thereby avoid this unnecessary 150 miles travel. The Northern Pacific Railway Company at first could not see its way clear to handle passengers via this route on freight trains, nor was there in their opinion sufficient need for exclusive passenger service. The development of the country, however and the great number of people interested in this matter was brought to bear upon the situation, and after much correspondence with the railway company, it was arranged that a passenger train be put on to run between Paradise and St. Regis, connecting at the former with main line trains Nos. 7 and 8, and with the Missoula-Coeur d'Alene trains in each direction at St. Regis. This service was inaugurated May 30th, 1910.

Subject: Passenger Train Service and Agency.

Quebec, Residents of,

vs.

Northern Pacific Railway Company.

Complaint was made on November 18th, 1909, stating that no passenger train in either direction was scheduled to stop at Quebec, a station located on the main line of the Northern Pacific, eight miles east of Greycliff and 7 miles west of Reed Point, consequently the people of that section were obliged to travel to either of these points as the case might be. An arrangement was made with the railway company to stop one daylight train east-bound and one west-bound, whenever there were passengers to get on or off.

This arrangement was satisfactory until time card 31-A went into effect February 27th, 1910, under which all east-bound trains were starred. Complaint was again made, and on time card 31-B, effective May 29th, train No. 5 west-bound, and No. 6 east-bound, were made flag stops at that station.

As to an agency, the total revenue on business both received and forwarded for four months ending April 30th, 1910, amounted to but \$109.17; total passenger revenue for the same period \$138.20, making the total earnings of that station for four months \$247.37, in view of which the question of an agency could not, of course, be considered.

Subject: Platform at Power Station.

Wm. Cowgill,

vs.

Great Northern Railway Co.

The above named made complaint to the Commission on November 15th, 1909, stating that the Great Northern Railway Company had failed to provide a station platform at Power, and that it was dangerous to passengers boarding or leaving trains at that point. An investigation was made and complaint taken up with the Great Northern Railway Company, with the result that a substantial platform was constructed.

Subject: Passenger Train Service.

Belgrade Commercial Club,

vs.

Northern Pacific Railway Co.

Belgrade, Montana, is located on the main line of the Northern Pacific Railway 9.5 miles west of Bozeman, is a thriving town of about 1,000 inhabitants, and the center of a most productive agricultural district. There is much passenger travel between Belgrade and Bozeman, the latter being the county seat, and under schedule of the Northern Pacific Railway Company, it was not possible for a passenger to go to Bozeman and transact business, returning home the same day.

Petition was presented to the Commission requesting that train No. 41 due at Belgrade at 1:19 A. M., be made a regular stop. The Commission believed that the service requested was fully warranted, and effective June 6th, train No. 41 was carded to stop at Belgrade to let off Bozeman passengers. Under this arrangement business men and others from Belgrade, may reach Bozeman at about 11 A. M., and have the entire day in the county seat, returning home that night.

Subject: Passenger Train Service.

Thompson Falls, White Pine, Noxon, Heron, Citizens of,

vs.

Northern Pacific Railway Company

Petition was made by the citizens of Thompson Falls, White Pine, Noxon, and Heron, requesting that train No. 7 leaving Thompson Falls at 7:03 P. M., White Pine 7:25, Noxon 8:10, and Heron 8:25 stop at these various stations. Many of the petitioners were business men who daily visit Thompson Falls, the county seat, and desire to return home the same day. Train No. 41 leaving Thompson Falls 11:27 A. M. was the only train west-bound stopping at these various places, but being so early in the day was very little accommodation to complainants.

The request of the petitioners appearing to the Commission as being reasonable, it was arranged with the railway company to have train No. 7 stop at the stations enumerated, commencing May 10th, 1910.

Subject: Passenger Train Service, Three Forks and Chestnut.

Bozeman Chamber of Commerce,

vs.

Northern Pacific Railway Company.

Petitions were presented to the Commission on April 9th, requesting that passenger train No. 7, west-bound be made a regular stop at Three Forks, and that train No. 8, east-bound be made a regular stop at Chestnut. Three Forks is a new town of about 1,000 inhabitants, situated 29 miles west of Bozeman, and many of the business men of the latter place daily transact business at Three Forks, and train No. 7, reaching there at 10:11 A. M., affords an opportunity to spend the greater part of the day at Three Forks and return to Bozeman that night. The request appearing to the Commission to be a reasonable one, arrangements were made with the railway company to have No 7 stop regularly.

As to No. 8 at Chestnut, this being a heavy train and Chestnut being a station located on the mountain, it was not thought advisable to ask the railway company to make this stop as the schedule of No. 8 is fast and the travel to that point very light.

Subject: Geyser Agency.

Geyser, Montana, Residents of,

vs.

Great Northern Railway Company.

Petition was received from the residents of Geyser and vicinity October 11th, 1909, stating that the railway company had erected a station building at that place, but up to that time the station had not been opened and prayed that an agency be established.

Investigation showed that during the winter months there was very little business transacted at that point, while during the summer and fall there was considerable shipping, and in conversation with the officials of the railway company, it was agreed that an agent would be checked in at Geyser not later than May 1st, 1910. This was satisfactory to the petitioners as well as to the Commission and on March 2nd, this station was opened for business with a regular agent in charge.

Subject: Passenger Train Service.

Residents, Sand Coulee and Stockett.

vs.

Great Northern Railway Company.

Various complaints and petitions by the residents of Sand Coulee and Stockett as well as the surrounding country, were presented to the Commission asking that the Great Northern Railway Company be required to furnish better facilities for the accommodation of passengers between Great Falls and the points mentioned above. Sand Coulee and Stockett are coal mining towns, distant from Great Falls 15 miles and 18.2 miles respectively, on a branch line which connects with the main line at Gerber Junction, 10.4 miles from Great Falls.

Heretofore the only passenger service accorded this branch was in the nature of a passenger coach carried on the coal train which runs daily, but on no regular schedule, so much so that passengers were obliged to drive across country to or from Great Falls.

The Commission made very thorough investigation of the conditions and necessity for better service, and found that while the coal train was not handling any great number of passengers on account largely of its irregularity, there would be considerable passenger travel between the points named if a train would run regularly. It was not thought that the business warranted exclusive passenger service, and an arrangement was affected whereby passenger service was established on this branch connecting at Gerber Junction with the Neihart branch train tri-weekly, that is, south-bound, Mondays, Wednesdays and Fridays; north-bound, Tuesdays, Thursdays and Saturdays. This arrangement gives the Stockett and Sand Coulee branch the same passenger service as the Neihart branch, and in the opinion of the Commission is sufficient to take care of the business for the present under ordinary conditions, and is a vast improvement over the former schedule.

Subject: Plevna Agency.

Plevna, Residents of,

vs.

Chicago, Milwaukee & Puget Sound Railway Company.

A petition was presented to the Commission on January 18th, 1910, praying that an agency be established at Plevna, Montana, on the line of the C. M. & P. S. Ry., on account of the settling up of the country in that vicinity, and the resultant increase in traffic to and from that point.

Investigation showed that the revenue from business done for the months of October, November and December, 1909, was not such as would warrant the railway company in establishing an agency, but it was found that the railway company maintained a telegraph office at that station and was willing to have the operator checked in as agent, to act as such so long as the railway company found it necessary to maintain a telegraph station. Accordingly the agency was established on March 1, 1910.

Subject: Passenger Train Service.

Townsend, Residents of,

vs.

Northern Pacific Railway Company.

A petition was received by the Commission February 18th, 1910, from the citizens of Townsend and other residents of Broadwater county, complaining that under the present schedule of passenger trains, passengers from Townsend were unable to go farther east than Logan or farther west than Helena without change of cars. This on account of trains Nos. 3 and 4 not stopping at that station, and praying that these two through trains be made regular stops for their accommodation.

The matter was at once taken up with the Northern Pacific Railway Company, and it was found that a new time card was then being prepared, under which through trains Nos. 5 and 6 which had been discontinued about December 1st, 1909, would be restored and would stop at Townsend, also that train No. 3, west-bound, would stop to let off passengers from St. Paul or Minneapolis, or to pick up passengers for Spokane or west. Train No. 4, east-bound, would stop to let off passengers from Spokane or west, and to pick up passengers for the Twin Cities. This new time card effective February 27th, 1910, provides service at Townsend as follows:

WEST-BOUND.

Train No. 177	11:20 A. M.
Train No. 171	5:42 P. M.
Train No. 5	6:37 P. M.
Train No. 3	6:55 A. M.

EAST-BOUND.

Train No. 178	3:43 P. M.
Train No. 172	8:12 A. M.
Train No. 6	3:01 A. M.
Train No. 4	12:35 P. M.

That is there are three passenger trains in each direction daily that stop regularly at Townsend, and in addition trains No. 3 and 4, for through passengers as above, which the Commission believes is ample service to take care of the amount of travel to and from that point.

Subject: North Coast Limited No. 1.

S. F. Shannon,

vs.

Northern Pacific Railway Company.

Complainant in this case arrived at Whitehall on the evening of March 10th, 1910, from Twin Bridges, the latter being located on a branch line connecting with the main line at Whitehall. Train No. 1, the North Coast Limited, came along in a few minutes and as is customary, stopped at Whitehall to take water and get a helper engine over the hill. Complainant desired to board this train for Missoula, but was not permitted to do so by the train employes who stated that they had instructions not to pick up any passengers at local points. As a result he remained at Whitehall for two hours until the local came along for Butte.

Mr. Shannon felt that as long as the train stopped there, there was no reason why passengers could not be picked up as it entailed no additional delay. No. 1, however, is a fast trans-continental train and in making its schedule, the railway company endeavored to cater to the demands of through traffic for fast time, with as few stops as possible. In fact this train is the most exclusive limited on the Northern Pacific, and is authorized to handle passengers from but three points in the state, viz., Billings, Butte and Missoula, and if it were permitted to take on passengers at Whitehall, there are many other points where the conditions are similar and which would also expect the same service. This would retard the fast time which the train is scheduled to make.

The Commission does not think that complainant was fully informed of the conditions, and on checking over the time card of the Northern Pacific it would seem to us that with the number of passenger trains in each direction daily, very good service is being given, particularly in the territory complained of.

Subject: Depot and Agency, Acton, Montana.

Residents of Acton,

vs.

Great Northern Railway Company.

Messrs. Snell & Arnott, attorneys at law, Billings, Montana, on behalf of their constituents took up with this Commission on January 21st, 1910, the matter of obtaining a depot and agency at Acton, on the line of the Great Northern Railway.

Investigation showed that this station was located between Rimrock and Broadview, in a section of the state which is sparsely settled, and information from the auditing department of the railway company showed that for the three months ending December 31st, 1909, the entire revenue, both freight and passenger, to and from that station amounted to only \$50.27. The complaint stated that while there was little business being done at Acton at the present time, there would be extensive shipping if the facilities requested were provided. The Commission could not of course, take any action on the showing made and our communications addressed to Messrs. Snell & Arnott endeavoring to elicit further information as to the prospective business referred to, remain unanswered, and we have accordingly closed our file.

Subject: Reporting Passenger Trains.

C. H. Wilcox,

vs.

Great Northern Railway Company.

Complaint relates that on November 26th, 1909, at Conrad, Montana, on the line of the Great Northern Railway, train No. 43, due at that station 5:54 P. M., was not marked on the bulletin board for the information of the public, whether it was on time or late. As a matter of fact, this train was about six hours late and on verbal advice from another passenger, Mr. Wilcox went to the depot at 11:20, and the train was at that time ready to pull out, being 5 hours and 30 minutes late. It was still not marked up on the board. As a result of this erroneous informaton and failure to comply with the law, complainant was obliged to have his baggage follow, depriving him of the use of his samples.

Investigation shows that the employe at Conrad whose duty it was to report this train, neglected to do so and on taking the matter up with the railway company through its legal department, the Commission is assured that such action has been taken as should remove cause for complaint in future.

Subject: Agency and Station Facilities, Meyers, Mont.

Meyers, Residents of,

vs.

Northern Pacific Railway Company.

A petition was presented to the Commission praying that a depot be built and an agency established at Myers, Montana, on the main line of the Northern Pacific Railway, owing to the number of people who were taking up land in that immediate vicinity, and the consequent increased volume of traffic in freight.

A thorough investigation was made to determine the amount of business done and therefore the necessity for granting the request, and it was found that while that section was settling up to a considerable extent, there was not the business to require the services of an agent. The Commission believed that complainants were entitled to something in the way of a station building, and an arrangement was made with the railway company to provide a temporary depot which would be comfortable for passengers waiting for trains, opposite which the train would stop, and the place would be kept heated and lighted at all times.

The need for an agency not being apparent at this time, the promise of the railway company to open a station there just as soon as business conditions warranted, was thought to be all that was necessary for the present, and the temporary facilities which have been furnished will take care of all immediate requirements.

Subject: Passenger Train Connectons at Logan, Mont.

Isaac Boyer,

vs.

Northern Pacific Railway Company.

Train number 496, Pony & Norris Branch, is due at Logan at 4:35 P. M., train No. 5, main line, is due to leave Logan at 5:05 P. M., but train 496 is frequently late and misses the connection with No. 5, entailing a long wait at Logan for west-bound passengers.

This was made the subject of a complaint by the above named on November 6th, 1909. Train No. 5 being through service, could not be held for branch line connections, but it was arranged with the Railway Company to ascertain by wire if No. 496 had passengers for the west, and if so, train No. 171, Logan-Helena stub, due to leave Logan at 4:10 P. M., would be held for train No. 496.

Subject: Train Service Plains and Thompson Falls.

Thompson Falls and Plains, Mont., Residents of.

vs.

Northern Pacific Railway Co.

Pettion was presented to the Commission by the residents of Plains and Thompson Falls, Montana, complaining of the passenger train service accorded under Northern Pacific time card Number 31, effective October 31st, 1909.

Thompson Falls is the county seat of Sanders County, and investigation showed that the trains scheduled to stop at these two stations did not make connections at junction points for the larger cities, resulting in long lay-overs. A schedule was submitted to the railway company which they accepted, and the petitioners advised that the new service was quite satisfactory.

RIMROCK, CLOSING STATION.

Applicatoin was made to the Commisison on September 23rd, 1910, by Gen'l. Supt. Taylor of the Great Northern, for permission to close Rimrock station on the line between Billings and Great Falls, giving as the reason, the small amount of business being transacted at that point.

Investigation showed that for seven months ending July 31st, the total revenue including ticket sales, averaged only \$112.95 per month, and the prospects for a heavier business throughout the Fall and Winter months was not at all encouraging. In vew of these figures, permission was given to discontinue the agency upon thirty days' notice, and accordingly the station was closed November 5th, 1910, with the understanding that same would be re-opened just as soon as business conditions would warrant.

FIELDING, CLOSING STATION.

On May 1st, 1910, an agency was established at Fielding, on the main lne of the Great Northern Railway in Flathead county, for the purpose of taking care of contractors' shipments engaged in the work of laying double track between Fielding and Essex.

Fielding is at the summit of the mountain grade and other than the traffic of the contractors, no business was transacted at that station, and upon completion of this work, the railway company requested permission to close the station. Our investigation shows that there is no need for an open station at that place now, and the necessary authority was given on November 21st, 1910.

RAINBOW, CLOSING STATION.

On January 1st, 1909, an agency was established at Rainbow on the Havre Division of the Great Northern Railway, for the purpose of handling the business of the Great Falls Water Power & Townsite Company, while the work at the Rainbow Dam & Power Plant was under construction.

This work was completed in October, 1910, and there being no other business transacted at that station, the Great Northern Railway Company asked the permission of the Commission to close the station. Our investigation showed that there was little or no traffic to or from Rainbow other than that of the Dam & Power Company, and accordingly upon the completion of the work, the station was authorized closed.

FORTINE, CLOSING STATION.

On March 14th, 1910, Fortine station on the Kalispell Division of the Great Northern Railway, was opened with an agent in charge for the purpose of handling to better advantage, the business of the Eureka Lumber Company during their logging operations. On September 14th., the Great Northern Railway Company reported to the Commission that the Eureka Lumber Company had suspended this work for the year, and consequently they would be pleased to have the Commission authorize discontinuing the service of an agent at that point.

About the same time that this application was received from the railway company, a petition was presented by the residents of Fortine and vicinity, protesting against the contemplated action of the railway company, but a careful investigation showed that for the twelve months ending July 31st, 1910, the average revenue per month including freight received and forwarded as well as passenger business, was but \$603.24, and that without the business of the Eureka Lumber Company this figure would be greatly reduced, in view of which it was not apparent that the service of an agent were required at that station at least until logging operations were resumed, and the Commission authorized that the station be closed, except that an operator be stationed there, from whom passengers might obtain information as to the arriving time of delayed trains. The station was closed on October 19th.

HINGHAM, CLOSING STATION, (Contemplated.)

The Great Northern Railway Company made application to the Commission on September 2nd, for permission to close Hingham station located on its main line in Chouteau county, stating that the earnings had decreased to the extent that the business did not warrant the services of an agent.

The Commission's investigation showed that for the six months ending August 31st, the average total revenue of that station was \$3,885.00 per month, which would appear to warrant the continuance of the agency, as the earnings were higher than at most stations of similar character, and we suggested to the railway company that for these reasons, the matter be given further consideration. This was done, and General Manager J. M. Gruber in his letter November 11th, advises that the agency will be continued unless the earnings drop off materially, in which event the question will be brought up again.

DORSEY, CLOSING STATION.

Dorsey, Montana, is located on the main line of the C. M. & P. S., and heretofore has been the nearest railroad point and distributing agency for White Sulphur Springs, an inland town distant from Dorsey about twenty miles, and the county seat of Meagher county.

The C. M. & P. S. Ry. recently made a change of line between Leader and Summit for the purpose of obtaining an easier grade, and this change of line leaves the station of Dorsey on the portion abandoned, and distant from the present main line about one mile. There has also been recently constructed a railroad known as the White Sulphur Springs & Yellowstone Park Line, connecting with the C. M. & P. S. at Leader, and extending to White Sulphur Springs. The business therefore, heretofore transacted at Dorsey for account of White Sulphur Springs, now goes direct to its destination via the W. S. S. & Y. P. R. R.

These changes had the effect of reducing the business transacted at Dorsey to almost nothing, and upon application of the railway company to close that station, authority of the Commission was given November 21st, 1910.

PART II.

OFFICE OF THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

Regulation to Govern the Issuance and Transmittal of Tariffs, Supplements or Amendments Thereto.

WHEREAS, it is the practice of some of the express companies operating within this state, to issue tariffs, supplements or amendments thereto, making the same effective on intrastate shipments immediately or at an early date, without first having obtained the approval of this Commission, resulting in many instances in requiring the tariff to be re-issued or amended, owing to objectionable features contained therein and,

WHEREAS, the same difficulty was experienced with railroad companies prior to July 1st, 1909, on which date a regulation of this Commission became effective after the subject had been gone over carefully with the representatives of the various traffic departments, and since said regulation became effective, the confusion and expense involved has been overcome, the Commission has directed its Secretary to make this regulation and to serve a copy thereof upon each express company operating within the State of Montana, to-wit:—

ON AND AFTER April 1st, 1910, the authority of this Commission must be obtained before any tariff, supplement or amendment thereto, shall be distributed to agents or to others; such authority may be obtained by submitting proof copy in **duplicate** by letter, by telegraph, or by telephone, if put in writing as a matter of record, and the issue will become effective twenty days from the date of such authorization, except that an earlier date effective may be named to protect emergency cases, when so requested in the application of the express company. It must be understood, however, that no authorization will be construed as given by implication. All rules, regulations, etc., must be specifically mentioned, and the Commission will hold as an unlawful issue, any tariff, supplement or amendment which is not handled in accordance with this regulation, on and after the 1st day of April, 1910.

Further, in order that there may be uniformity in the transmittal of tariff to this Board, the form following will be used to accompany each separate tariff, supplement or amend-

ment, and each transmittal will bear the next consecutive number, two copies of each issue must be furnished the Commission, one of which if correct, will be certified to and returned, the other retained for our files.

FORM OF TRANSMITTAL.

No.

..... Express Co.
..... 191....

The Railroad Commission of Montana, .

Helena, Montana.

Gentlemen:—

We enclose herewith for approval of your Board copies
of our (tariff or amendment) Number, Mont. R. C.
No., applying on from
to, effective

This tariff is issued in accordance with authorization covered by your
.....(letter or telegraph)..... of, your authorization
Number of(Date).

Yours truly,

BOARD OF RAILROAD COMMIS-
SIONERS OF THE STATE OF
MONTANA.

Dated March 15th, 1910.

(Signed) R. F. McLAREN, Secretary.

BEFORE THE RAILROAD COMMISSION OF MONTANA.

**In the Matter of Application by the Montana, Wyoming &
Southern Railroad Company to Increase the
Freight Rate on Coal.**

Submitted Dec. 16th-17th, 1909. Decided, Feb. 10th, 1910.

REPORT OF THE COMMISSION.

Number 32.

On April 14th, 1909, a public hearing was held on the initial motion of the Commission for the purpose of taking up the question of coal rates on all lines of railroad within the state. At this hearing the Yellowstone Park Railroad Company was not represented although proper notice had been given, and in accordance with our rules of practice which provide that in case of failure to answer, the Commission will take such proof of facts as may be deemed proper and reasonable and make such order thereon as the circumstances of the case appear to require. Report and Order Number 26 was issued under date of July 9, 1909, effective August 1st, providing that the local rate on coal from points on the Yellowstone Park Railroad to Belfry and Bridger, Montana, shall be fifty cents, and on all coal destined to points beyond their own line the said Yellowstone Park Railroad Company will accept a proportional rate of thirty-five cents per ton of 2,000 pounds.

The Y. P. R. R. is a short line, approximately twenty-two miles in length, extending from Bearcreek coal fields to Bridger where it connects with the Clark's Fork Branch of the Northern Pacific.

Subsequent to April 14th and before Order Number 26 was issued, this road went into the hands of receivers. A conference was held between the Commission and said receivers, namely, H. R. French and M. W. Maguire, who, after the situation had been fully explained, agreed in writing to accept the rates above named. Later the property was

sold, a new organization affected, and the road took the corporate name of the Montana, Wyoming & Southern Railroad Company, Frank S. Gannon, president.

On November 16th, 1909, Mr. Gannon made application to the Commission for a re-hearing on the ground that "owing to the negligence of the management of the Yellowstone Park Railroad Company, the predecessor of the Montana, Wyoming & Southern, the former was not represented at the rate hearing last April. We feel that this neglect of duty was the cause of a general misunderstanding of the operating conditions in the Bearcreek region. The result of the operation for three months under the new rates demonstrates that it is impossible for the present management of the property to perform its duty to the public and its security holders under existing conditions. We are, therefore, constrained to ask for a hearing, or in other words that you re-open the case in order to give us an opportunity to submit the information which you should have had in your possession when your Order No. 26 was promulgated."

Accordingly a hearing was held December 16th and 17th, 1909:

Geo. W. Pierson, Counsel.

M. W. Maguire, Gen'l. Mgr., for Montana, Wyoming & Southern Railroad Co.

O. F. Goddard, Counsel, for Coal Operators.

It devolves upon the applicant in this case to establish the facts alleging that the present proportional rate of thirty-five cents per ton is unremunerative. One hundred thirty-six pages of testimony are recorded, the preponderance of which is to show that since the thirty-five cent rate went into effect the tonnage has increased while the earnings have decreased. This the Commission believes to be a correct statement, but the investigation plainly developed the conditions responsible for this, namely, that the Montana, Wyoming & Southern Company is not equipped to handle the available business which the coal companies of the Bearcreek field are prepared to give them, owing to the very poor condition of its power as admitted by General Manager Maguire, and the further fact that the company neither owns nor controls any cars whatever suitable for interchange with other lines of railroad, but is dependent entirely upon the disposition or ability of the Northern Pacific Railway Company to supply

the equipment for their use, resulting in an exceedingly uncertain car supply which places the mines much at a disadvantage not knowing what to expect, and therefore unprepared to work to their maximum capacity even on days when there are enough cars, as it is impossible to maintain a full complement of miners who under these conditions could only at best work intermittently.

This whole question, as viewed by the Commission, can be remedied by the proper equipment of the road to the extent that it can assure the mine owners sufficient and continuous service, thus enabling the latter to extend their operations to the maximum capacity and furnishing the said Montana, Wyoming & Southern with a much greater tonnage for transportation over its line of railroad. If this were done there is no question but that the present rate of thirty-five cents per ton would be amply remunerative to pay all fixed charges, interest, insurance, etc. In fact the following comparison of rates on the Northern Pacific should serve to dispose of any doubt on that point. The Montana, Wyoming & Southern gets not less than 35 cents per ton on every ton of coal handled, the rate per ton per mile figuring 1.591 cents, while the Northern Pacific, taking into consideration the long, short and intermediate hauls, to all stations within the state, averages on Bearcreek coal, .689 cents per ton per mile. It will be readily seen that even with the reduced rate of 35 cents the M. W. & S. receives **131 per cent higher rate** than the Northern Pacific on a ton mile basis.

While it is a recognized principle of rate making that the short haul is entitled to a greater rate per ton mile than the long haul, the comparison of earnings per ton mile between the Montana, Wyoming & Southern, and its connecting line, the Northern Pacific, will at once show that the complainants have been given a liberal increase on mileage earning basis.

The application of the complainant is hereby denied and the Secretary is instructed to serve a copy of this report on the president of the said Montana, Wyoming & Southern Railroad Company.

THE BOARD OF RAILROAD COM-
MISSIONERS OF THE STATE OF
MONTANA.

Dated Feb. 10th, 1910.

(Signed) R. F. McLAREN, Secretary.

INITIAL MOTION

By the
BOARD OF RAILROAD COMMISSIONERS OF THE
STATE OF MONTANA.

vs.

ADAMS EXPRESS COMPANY,
GREAT NORTHERN EXPRESS COMPANY,
NORTHERN EXPRESS COMPANY,
WELLS FARGO & COMPANY EXPRESS,
CHICAGO, BURLINGTON & QUINCY RAILROAD CO.,
CHICAGO, MILWAUKEE & PUGET SOUND RY. CO.,
MONTANA RAILROAD COMPANY,
PACIFIC EXPRESS COMPANY.

In the Matter of Rates or Charges for the Transportation of
Property by Express; also Rates or Charges for the
Transportation of milk and cream by Railroad
Companies.

Hearing January 26th-27th-28th, 1910. Decided May 23rd, 1910.

REPORT AND ORDER OF THE COMMISSION.

Number 36.

HELD, that the rates charged for the transportation of matter by express within the state of Montana are unreasonably high, and are not warranted by operating, physical or other conditions, and that said rates are discriminatory against the state of Montana as compared with the rates in effect in other states and on interstate traffic.

The Commission's complaint, alleging unreasonableness in the present rates, was served on each of the following defendants November 27th, 1909, notifying such defendants to appear before said Commission on the 26th day of January, 1910, to show cause why the existing rates or charges should not be reduced. A public hearing was accordingly held commencing at 10 o'clock, A. M., January 26th, and concluding at 6 o'clock, P. M., the 28th.

REPRESENTED:

Adams Express Co.	By W. E. Taylor.
Great Northern Express Co.	By I. Parker Veazey. Ronald Stewart. W. W. Owens.
Northern Express Co.	By Wm. Wallace, Jr. C. B. Cooper. E. W. Bennett.
Wells Fargo & Co. Express	By John D. Ludlow.
Chicago, Burlington & Quincy R. R. Co.	By Wm. Wallace, Jr. E. W. Bennett.
Chicago, Milwaukee & Puget Sound Ry. Co., and the Montana Railroad	By R. M. Calkins. W. D. Carrick.
Pacific Express Co.	Not represented.
Commissioners	{ Morley, Stanton, Boyle.

W. E. Taylor, representing the Adams Express Company, stated that he had received a telegram instructing him to attend this hearing and had come on short notice without any data relative to the subjects under consideration, and was therefore unprepared to offer testimony or make reply to the Commission's inquiries.

It should be explained that on the lines of the Chicago, Burlington & Quincy Railroad, the Chicago, Milwaukee & Puget Sound Ry., and the Montana Railroad, milk and cream was being transported on passenger trains by the railroad companies themselves, that is, this business had not been turned over to the express companies, hence the necessity for making the aforesaid companies defendants in this complaint.

In a general way, it may be said that express rates are divided into three classes. First, the merchandise rates, which represent two and one-half times the first class general distance tariff of the railroad companies; second, the General Specials, including fruit and vegetables; third, commodity rates which are usually arbitrarily fixed between certain points; second and third being graduated respectively lower than the rates established on merchandise.

In the case of *Kindal vs. Adams Express Company, et al*, 13 Interstate Commerce Commission 475, the I. C. C. laid down the following principles which would appear to be applicable in this proceeding:

- A. "Within certain limits express rates and freight rates, compete, and to that extent express rates should be established with reference to freight rates."
- B. "The main object of an express service is expedition, and express rates should not be so low as to attract business which might properly go by freight and thereby congest and interfere with the service by express."
- C. "In determining whether the present charges of the defendants are reasonable, inquiry must be made into the character of the business, the amount of capital required for its conduct, the hazard involved, and especially the profits which these companies are now making under the rates attacked."
- D. "A comparison of express rates in one locality with those in another is of much greater value than a similar comparison between freight rates since the character of the business and the conditions are more nearly the same."

A and B may be considered in unity. Freight in less than carloads is classified, practically, into four classes, and the following table compares the present freight rates, under the general distance tariff, with the merchandise and also with the "General Special" rates of the express companies. It is true that the Northern and the Wells Fargo have in effect a special tariff naming rates on fruit and vegetables, butter, eggs, cheese, dressed poultry and meat, lower than the "General Special" rates named below, but for the purpose of this report, we have quoted only the merchandise and the "General Specials" which in a general way represent the express rate situation in the state:

RATES IN CENTS PER 100 POUNDS.

Dis- tance	BY FREIGHT					BY EXPRESS	
	Governed by Western Classification					Mdse.	General Special
	1st	2nd	3rd	4th	Average		
25	25	21	18	15	20	60	50
50	40	34	28	24	32	100	80
75	50	43	35	30	40	125	100
100	60	51	42	36	47	150	120
125	70	60	49	42	55	175	140
150	80	68	56	48	63	200	150
175	90	77	63	54	71	225	175
200	100	85	70	60	79	250	190
225	110	94	77	66	87	275	210
250	120	102	84	72	95	300	225
275	130	111	91	78	103	325	250
300	140	119	98	84	110	350	250
325	145	123	102	87	114	350	250
350	150	128	105	90	118	375	275
375	155	132	109	93	122	400	290
400	160	136	112	96	126	400	290
450	170	145	119	102	134	425	300
500	180	153	126	108	142	450	300
550	190	162	133	114	150	475	325
600	200	170	140	120	158	500	340
650	210	179	147	126	166	525	350
700	220	187	154	132	173	550	350
Total	2795	2380	1958	1677	2205	6985	5010

From these comparisons it will be noted.

1st: Merchandise rates are equal to	2.5	times 1st class freight rates.
	2.945	" 2nd " " "
	3.567	" 3rd " " "
	4.165	" 4th " " "
2nd: General Special rates are equal to	1.792	" 1st " " "
	2.113	" 2nd " " "
	2.558	" 3rd " " "
	2.987	" 4th " " "

It must be acknowledged that of the total freight traffic in less than carload lots, only a small percentage moves under the **first class** rate; third and fourth class predominating. As a matter of fact, investigations held by the Commission have elicited testimony to show that not more than **ten per cent** of the freight business in Montana moves under the general distance tariff; the great bulk of the traffic being handled under distributing or special commodity rates, much lower than the said general distance tariff figures as shown in the preceding table. Thus it would appear that while the rates charged for express service should be relatively higher than those which would be reasonable by freight on the same shipments, the present schedules in Montana could be con-

siderably reduced without any probability of such reduction operating to attract any great volume of business to the express service, such as would over tax their facilities.

"C" as to the amount of money actually invested,, capitalization, dividends declared and other details of finance, the answers of the defendants show that the stock of the Northern Express Company is all owned by the parent company (the Northern Pacific Railway Co.) while all the stock of the Great Northern Express Company is held in trust for the stock holders of the Great Northern Railway Company, the amount of such capital stock being an arbitrary figure which in the main, purports to represent the value of its contract with the railway company for express privileges. This fact being admitted, it makes but little difference whether the dividends declared are 8% on \$5,000,000 as shown by statement of the Northern, or 50% on \$1,000,000 as testified by the Great Northern Express Company, as these dividends are paid from net earnings, after having paid to the railway company 40 to 55% of all gross earnings as compensation for the furnishing of cars and cost of hauling same over their respective lines of railroad.

It therefore follows that the actual net earnings from express business to the stock holders of the Northern Pacific, and Great Northern Railway Companies (by reason of their having incorporated the express service as a subsidiary corporation), is not alone represented by dividends declared on the capital stock of the express company, but is still further augmented by the amount that the 40 to 55% of the gross earnings, as referred to above, exceeds the actual cost of service rendered by the railway company to the express "department."

The Wells Fargo & Company Express is capitalized for \$24,000,000, which includes its banking and real estate business as well as express. Representative of that company was unable to say who the ten largest stock holders were, but testified that the railroad companies over whose lines his company operated, did not own or control any of the capital stock.

In answer to question, "What dividend did you pay on your common or other stock for the year ending June 30th, 1909," reply is made, "10 per cent on eight million dollars," and in reply to question, "What were your net earnings (surplus)

for same period," it is stated, "The net earnings or surplus for the same period, from express was \$3,262,478.88." This latter figure representing about 48% of the eight million dollars capital stock.

The Wells Fargo Company entered the Express service in this state May 1st, 1909, operating over the line of the Chicago, Milwaukee & Puget Sound Railway, which has been in operation in Montana less than two years, hence no great amount of business can be anticipated for a time. It cannot, therefore, be determined upon the volume of the present traffic what the rates for express service shall be, and the Commission finds no reasons in the investigation for making a rate or schedule of rates for that company different in any particular from that prescribed for the Northern and Great Northern within the state.

**"D" COMPARISON OF EXPRESS RATES WITH OTHER STATES.
RATES SHOWN IN CENTS PER 100 POUNDS.**

Distance	MONTANA		NORTH DAKOTA		MINNESOTA	
	Mdse.	General Special	Mdse.	General Special	Mdse.	General Special
25	60	50	50	40	40	40
50	100	80	75	60	50	40
75	125	100	100	80	55	50
100	150	120	100	80	65	60
125	175	140	125	100	85	65
150	200	150	150	120	90	75
175	225	175	150	120	100	80
200	250	190	150	120	120	100
225	275	210	175	140	125	100
250	300	225	175	140	125	100
275	325	250	200	150	130	110
300	350	250	200	150	140	110
325	350	250	225	175	150	120
350	375	275	225	175	160	125
375	400	290	250	190	170	140
400	400	290	250	190	170	140
450	425	300	275	210		
500	450	300	300	225	(Rates in Minnesota do not extend beyond 400 miles).	
550	175	325	325	250		
600	500	340	350	250		
650	525	350				
700	550	350				
Montana merchandise rates representing					100%	
North Dakota would be					65.1	
Minnesota would be					43.7	

It has been shown in this report that the rates now in effect in this state for the transportation of merchandise by express are more than three times, and the general special rates more than two and a quarter times the average of the four classes under the general distance freight tariff. It has been shown that the merchandise rates in Montana are excessive as compared with North Dakota, and exacting in comparison with Minnesota. It has not been shown that the operating conditions in Montana are materially different from those in other states; it has not been shown that the risk is greater; it has not been shown that the express earnings would be unjustly impaired by a reasonable reduction in the existing rates or charges.

The Commission is convinced that the present rates in effect in the states of Washington and Minnesota for the transportation of the products of truck, fruit and dairy farms, have been one of the main factors in the growth of these industries to their present large proportions, and we are firmly of the belief that the establishing of a more reasonable schedule for the distribution of these commodities from Montana producers to Montana consumers, will result in a rapid development of these industries in numerous sections of the state.

Since the date of hearing on this complaint, the Montana Railroad has been absorbed by the Chicago, Milwaukee & Puget Sound Railway Company, and the former is now obsolete.

On April 1st, 1910, the American Express Company succeeded the Pacific Express Company operating over the line of the Oregon Short Line Railroad in Montana, hence the American Company not having had an opportunity to be heard is not made a party to this order, but the Commission recommends that that company adopt the schedule herein promulgated, thereby obviating the necessity of calling another hearing to afford the American Company an opportunity to show cause why its rates should not be made to conform with those of other companies operating in the state.

The question of rates for the movement of milk and cream has not been determined, and the Commission reserves the right to make a supplementary order at a later date if necessary to cover that feature of the investigation.

Order.

NOW THEREFORE, it is hereby ordered that the Great Northern Express Company, the Northern Express Company, the Adams Express Company, and the Wells Fargo & Company Express, shall adopt and make effective by their respective companies twenty days after receipt of certified copy of this report and order, the following schedule of rates for the transportation of matter by express between points within the state of Montana, which schedule shall remain in effect until the further order or approval of this Commission, and the said express companies shall at the earliest date submit to this Commission proof copy of said schedule and before the same is placed in the hands of agents.

The tariff hereby ordered to become effective shall be prepared in the form of a distance tariff and shall be subject to all rules and conditions of the current official express classification and supplements thereof.

Each defendant to whom this order is directed, shall publish a table of distances to be used in connection with said distance tariff, such table to show in geological order, a complete list of all stations, whether open or prepay, on their respective lines within Montana and shall indicate the actual distance between such stations as well as the actual distance from each and every junction point with other express companies, to all stations on their respective lines in this state.

Any special or commodity rates which are now in effect and which may be lower than the schedule of rates authorized by the terms of this order, shall so remain in effect as at present.

**MAXIMUM TARIFF FOR THE TRANSPORTATION OF MATTER BY
EXPRESS.**

RATES SHOWN IN CENTS PER 100 POUNDS.

For Distance	Merchandise	General Special	Fruit, Vegetables, Butter, Cheese, Eggs, Dressed Poultry and Fresh Meat
25	40	40	40
35	50	40	40
45	60	50	50
65	75	60	55
85	90	75	65
100	100	80	70
115	110	85	75
135	125	100	85
155	140	110	90
170	150	120	100
185	160	125	105
215	175	140	115
250	200	150	130
285	225	175	145
350	250	190	160
420	275	210	175
490	300	225	190
560	325	250	200
630	350	250	215
700	375	275	230
770	400	290	245
800	425	300	250

Where exact distance is not given, use rate for next greater distance shown in schedule.

The Secretary is directed to serve upon the Northern Express Company, the Great Northern Express Company, the Adams Express Company, and the Wells Fargo & Company Express, a true and certified copy of this report and order, and to furnish a copy thereof to the American Express Company, the Chicago, Milwaukee & Puget Sound Railway Company, and the Chicago, Burlington & Quincy Railroad Company, for their information. The American Express Company is hereby requested to notify the Commission in writing not later than June 20, 1910, as to its attitude toward the recommendation as herein contained, that that company adopt the schedules of other companies within the state.

BY ORDER OF THE BOARD OF
RAILROAD COMMISSIONERS OF
THE STATE OF MONTANA.

Dated May 23rd, 1910.

(Signed) R. F. McLAREN, Secretary.

NOTE.—See also Orders Nos. 36-A and 38.

BEFORE THE BOARD OF RAILROAD COMMISSION-
ERS OF THE STATE OF MONTANA.

In the Matter of Re-hearing on Application by the Northern
and Great Northern Express Companies, to Further
Investigate the Question of Rates for the Transporta-
tion of Merchandise by Express, as Determined
by the Commission's Order No. 36, Dated
May 23rd, 1910.

Petition is dated June 13th, 1910. Re-hearing set for June
30th, 1910.

ORDER OF THE COMMISSION.

Number 36-A.

Order.

The Northern Express Company and the Great Northern Express Company, by and through their duly authorized agents and attorneys having filed their motion for a re-hearing upon the merchandise rates fixed and established by the Railroad Commission of Montana, by its Order Number 36, and the said motion and petition having been considered by the Board, and it appearing to the Board therefrom that a showing warranting re-opening and re-hearing said cause has been made, as to said merchandise rates, and to those rates only, and the Commission desiring to be further advised in the premises:

NOW THEREFORE, IT IS HEREBY ORDERED:

1. That the said cause be re-opened and a further hearing had as prayed for, but only as to such merchandise rates.
2. That the time and place of such further hearing be and is hereby fixed as the 30th day of June, 1910, at 10 o'clock, A. M., at the offices of this Board in the Capitol Building, at Helena, Montana, and that due notice of said hearing has been given as provided by law.
3. That until further order of this Board, said Order Number 36, in so far only as it shall effect merchandise rates is

hereby suspended and stayed; in all other respects however, such order shall become effective and operative in accordance with its terms.

THE BOARD OF RAILROAD COM-
MISSIONERS OF THE STATE OF
MONTANA.

Dated June 14th, 1910.

(Signed) R. F. McLAREN, Secretary.

NOTE.—See also Order No. 38.

BEFORE THE RAILROAD COMMISSION OF MONTANA.

On Petition of the Northern and Great Northern Express Companies for Re-hearing in the Matter of Merchandise Express Rates, as set forth in Order Number 36, Dated May 23, 1910.

Re-hearing, June 30th, 1910. Decided, August 5th, 1910.

REPORT AND ORDER OF THE COMMISSION.

Number 38.

Refer to Report and Order Number 36, dated May 23rd, 1910. Rates for the transportation of General Specials, fruit, vegetables, etc., became effective in accordance with the terms of said order; application was made, however, by the Northern and Great Northern companies, June 13th, asking for re-hearing upon the **merchandise** rates and suspension of same pending final determination. It appearing to the Commission therefrom that a showing warranting re-opening and re-hearing said cause, had been made, and desiring to be further informed in the premises, granted the application, and said merchandise rates were suspended and stayed on all lines within the state. Re-hearing was accordingly had on June 30th, for the further consideration of the **merchandise rates only**.

REPRESENTED:

Wells Fargo & Co. Express	By John D. Ludlow.
	C. W. Stockton, Counsel.
Great Northern Express Co.	By D. S. Elliott.
	I. Parker Veazey, Counsel.
Northern Express Co.	By J. M. Hannaford.
	E. W. Bennett,
	Wm. Wallace Jr., Counsel.
American Express Co.	By J. W. Rogers.
	Wm. Wallace, Jr., Counsel.
Commissioners,	
Morley,	
Stanton,	
Boyle.	

The testimony adduced at this time which was not presented at the January hearing, is convincing that the merchandise rates as named in Order Number 36, particularly for distances up to one hundred and fifty-five miles, are not proportionately remunerative, and having taken into consideration the unity of expense to the carrier companies on short and long haul business for receiving, recording, caring for and delivery, that portion of Order Number 36 relating to **merchandise rates** only, is hereby modified as follows:

Order.

To become effective twenty days after receipt of certified copy of this report and order the Great Northern Express Company, the Northern Express Company, the Adams Express Company, and the Wells Fargo & Co., Express, shall adopt the following schedule of rates for the transportation of merchandise by express between points within the State of Montana, which schedule shall remain in effect until the further order or approval of this Commission, and shall be subject to all rules and conditions of the current official express classification and supplements thereof, or exceptions thereto, except as to its relative bearing to rates on general specials, fruit, vegetables, etc., as per Order Number 36.

MERCHANDISE RATE IN CENTS PER 100 POUNDS.

Distance	Rate
15 miles	40
25	50
35	60
45	75
65	90
85	100
100	110
115	125
135	140
155	150
170	160
185	175
215	200
250	225
285	250
350	275
420	300
490	325
560	350
630	375
700	400
770	425
800	450

Where exact distance is not given use rate for next greater distance shown in schedule.

The Secretary is directed to serve upon the Northern Express Company, the Great Northern Express Company, the Adams Express Company and the Wells Fargo & Company Express, a true and certified copy of this report and order and to furnish a copy thereof to the American Express Company for the latter's information and concurrence as recommended in Order Number 36.

BY ORDER OF THE BOARD OF
RAILROAD COMMISSIONERS OF
THE STATE OF MONTANA.

Dated August 5th, 1910.

(Signed) R. F. McLAREN, Secretary.

The following tabulation shows a comparison of the rates made by the Commission, its Orders Number 36, dated May 23rd, and 38 dated August 5th, 1910, and the rates formerly in effect between Montana points:

RATES SHOWN IN CENTS PER 100 POUNDS.

Distance	Former Rates on Mdse.	New Rates on Mdse.	Former Rates on General Specials	New Rates on General Specials	New Rates on Fruits, Etc.
15	40	40	40	40	40
25	60	50	50	40	40
35	75	60	60	40	40
45	90	75	75	50	50
65	110	90	85	60	55
85	140	100	110	75	65
100	150	110	120	80	70
115	160	125	125	85	75
135	175	140	140	100	85
155	200	150	150	110	90
170	225	160	175	120	100
185	225	175	175	125	105
215	275	200	210	140	115
250	300	225	225	150	130
285	325	250	250	175	145
350	375	275	275	190	160
420	400	300	290	210	175
490	450	325	300	225	190
560	475	350	325	250	200
630	525	375	350	250	215
700	550	400	350	275	230
770	575	425	375	290	245
800	600	450	390	300	250

BEFORE THE RAILROAD COMMISSION OF MONTANA.

In the Matter of the Application of the Chicago, Milwaukee &
Puget Sound Ry. Co., to Make Adjustment
of Certain Freight Charges.

The development of a small coal mine at Lock Bluff Spur, Montana, on the line of the C. M. & P. S. Ry, made it necessary to establish commodity rates on coal from that point, and effective October 28th, 1909, tariff was issued by the railway company voluntarily, naming rate of 60 cents per ton Lock Bluff Spur to Miles City, Montana. It now develops that certain cars of coal, as hereinafter enumerated, moved prior to the date on which this tariff went into effect, and on which a rate of 70 cents per ton was charged, there being no rate in effect at that time except Class "D".

The Chicago, Milwaukee & Puget Sound Railway Company, having on April 8th, 1910, made application to this Commission for authority to refund 10 cents per ton on shipments which were assessed the higher rate as referred to above, it is hereby authorized that the said rate of 60 cents per ton of 2,000 pounds be applied, and the sum of 10 cents per ton be refunded, this with the understanding as stated by the applicant, that the cars listed below were the only shipments of coal from Lock Bluff Spur to Miles City, prior to October 28th, 1909.

FROM CALABAR, MONTANA, ACCOUNT OF LOCK BLUFF SPUR, TO
MILES CITY MONTANA. CONSIGNEE, COAL CREEK COAL COMPANY.

Date	Car No.	W. B.	Net Weight
9-29-09	60364	16	56900
10- 5	73994	1	68200
8	49380	2	54700
10	84517	5	64500
16	202175	8	82100
24	72180	13	62800

THE BOARD OF RAILROAD COM-
MISSIONERS OF THE STATE OF
MONTANA.

Dated June 6th, 1910.

(Signed) R. F. McLAREN, Secretary.

BEFORE THE RAILROAD COMMISSION OF MONTANA.

In the Matter of Application by the Chicago, Milwaukee & Puget Sound Railway Co., to Make Adjustment of Freight Charges on Certain Cars Loaded With Ties Shipped from Ravenna, Montana, to Anaconda, Montana, in July, 1909. Over-charge Claimed by Consignor.
(Claim No. 6630.)

On July 1st, 1909, H. A. Denny, shipped from Ravenna, C. M. & St. P. Cars No. 86044 and 73100, and on July 3rd, C. M. & St. P. Car No. 200584, loaded with ties billed to Anaconda, on which the minimum weight was charged at tariff rate of ten cents per cwt. These cars were weighed on track scales at Anaconda and it was found that all three were loaded with less than the prescribed minimum for cars of that capacity.

Mr. Denny presented claim to the C. M. & P. S. Ry Co., asking that the freight charges be adjusted on basis of actual weight of each car, stating that the conductor who placed these cars for loading at Ravenna, instructed him not to load more than 300 ties in each car. These instructions claimant observed notwithstanding that the cars were not loaded to full visible capacity, hence the reasonableness of claim for refund.

The Railway Company, after having made full investigation, of the facts, submitted the entire file to this Commission requesting authority to waive the legal minimum in this instance, and to make settlement on basis of actual weight as claimed.

THEREFORE, being fully informed of the conditions and having taken into consideration the explanation made by claimant which the conductor in question verifies, the application of the Railway Company is hereby granted to make refund of the following amounts:

	Car	Billed Weight	Charges Collected	Actual Weight	Charges Corrected	Amount of Refund
C. M. & St. P.	86044	60,000	\$60.00	46,000	\$46.40	\$13.60
"	73100	55,500	55.50	35,000	35.00	20.50
"	200584	60,000	60.00	45,600	45.60	14.40
						\$48.50

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

Dated May 13th, 1910.

(Signed) R. F. McLAREN, Secretary.

BEFORE THE RAILROAD COMMISSION OF MONTANA.

In the Matter of the Application of the Northern Pacific Railway Company to Make Adjustment of Certain Freight Charges.

Mr. W. H. Merriman, District Freight & Passenger Agent of the Northern Pacific Railway Company, wrote the Commission on March 23rd, 1909, calling attention to tariff number 22803, which provides a rate of \$1.00 per ton on coal from Red Lodge to Bridger, while in the opposite direction between same points, there was no rate except class "D" which figured \$2.00 per ton, and asked the authority of the Commission to issue a supplement making the \$1.00 rate apply **between** Bridger and Red Lodge. This authority was granted, retroactive to January 1st, 1909, in order to protect some shipments which had moved since that date. A supplement was issued (Supplement No. 15) but through oversight, was not made retroactive to January 1st as authorized, same taking effect June 15th, 1909, prior to which date and subsequent to January 1st, four cars moved Bridger to Red Lodge, three of which were billed at \$1.00 per ton, the agent having misconstrued the tariff, while the fourth car was charged class "D" rate, or \$2.00 per ton.

THEREFORE, on January 10th, 1910, the error having been discovered, the said Northern Pacific Railway Company made application to the Commission for authority to make refund on the fourth car as referred to above, and for protection of the lower rate charged on the other three, said lower rate not being covered by published tariff.

In view of the fact that the authority of the Commission was given to make rate of \$1.00 per ton retroactive to January 1st, 1909, and that through oversight supplement to tariff became effective June 15th, authority is hereby given to apply rate of \$1.00 per ton on following shipments of coal, which the Commission understands to be all that moved between January 1st and June 14th, 1909, both dates inclusive:

	Consignee.	
Bridger to Red Lodge	1-19-09 W.B. 196	M. J. Roysdon.
" " " "	1-25-09 W.B. 308	M. J. Roysdon.
" " " "	3-24-09 W.B. 163	B. E. Vaill.
Bearcreek, acct.Bridger, to Red Lodge	4-22-09 W.B. 181	Hawkeye Elevator Co.

BOARD OF RAILROAD COMMIS-
MISSIONERS OF THE STATE OF
MONTANA.

Dated February 23rd, 1910.

(Signed) R. F. McLAREN, Secretary.

Subject: Overcharge on Dried Fruit, Interstate Shipment.

G. W. Ryan,

vs.

Pacific Coast Steamship Co., and Great Northern Railway Company.

The above named complainant, a resident of Great Falls, Montana, and engaged in the wholesale grocery business, shipped on June 15th, 1909, from San Francisco, California, to Chinook, Montana, a car of dried fruit in boxes, the billed weight thereof being 30,000 pounds, freight charges assessed at rate of \$1.59 per cwt., making the total charges \$447.00, in accordance with Great Northern tariff, G. F. O. 8051, Oregon Railroad & Navigation I. C. C. No. 670, effective Sept. 1st, 1902, which at the time this shipment moved, was the only authorized rate to apply, viz., fourth class.

The tariff referred to above names a commodity rate of \$1.00 per cwt., minimum 24,000 pounds from San Francisco, Cal., to Havre, Montana, and from Havre to Chinook, G. N. G. F. O. 20209, I. C. C. A-2973, effective April 30th, 1909, names rate of 15 cents per cwt., with minimum of 30,000 pounds, both of which tariffs were in effect at the time the shipment in question moved.

During the period November 19th, 1904, to January 1st, 1909, there was a rate on dried fruit in boxes of \$1.10 per cwt., San Francisco to Chinook, minimum 30,000, said rate being carried in Trans-continental tariff No. 3-E, and its application to points in Montana east of Havre was authorized by Circular 28-D, which was cancelled by Supplement No. 6, dated January 1st, 1909, leaving only the fourth class rate of \$1.59 per cwt. The combination of commodity rate of \$1.00 to Havre plus 15 cents per cwt., thence to Chinook would make the through rate \$1.15 based on minimum of 24,000 San Francisco to Havre, and 30,000 from Havre to destination. The actual weight of this shipment was 26,320 pounds, and the application of the \$1.15 rate as above would make the through charges \$308.20; therefore, complainant asked for refund of \$168.80 alleging that the rate of \$1.59 was unreasonable and unjust.

This shipment being interstate, it was taken up by this Commission with the Interstate Commerce Commission at

Washington, D. C., who, after investigation, found that the rate complained of was unreasonable and unjust, and awarded reparation on basis of \$1.15 through; and inasmuch as the Great Northern Railway Company had published effective Sept. 2nd, 1909, a through commodity rate of \$1.10, minimum 30,000 pounds, from San Francisco, California, to Mondak, Montana, the latter station being 265 miles further distant than Chinook, directed that for the future the rate to Chinook should not exceed that to Mondak.

Complainant received refund in the sum of \$168.80 with interest at six per cent from June 29th, 1909.

Subject: Overcharge on Household Goods.

Ora Dillman,

vs.

Judson Freight Forwarding Co., St. Louis, Mo.

Through the agency of the Judson Freight Forwarding Company of St. Louis, complainant made shipment of 1450 pounds of household goods St. Louis, Mo., to Whitehall, Montana, May 7th, 1910, with the understanding that his goods would be included in a carload lot St. Louis to Kansas City, getting the benefit of the carload rate for that distance, and from Kansas City shipped locally to Whitehall.

Upon demand of the defendant, complainant remitted \$34.08 or \$2.35 per cwt., to cover charges through to destination. Complaint was made to this Commission alleging overcharge, and upon investigation it was found that the shipment had moved St. Louis to Denver, instead of to Kansas City. The carload rate St. Louis to Kansas City is 19½ cents per cwt; less than carload 60c. St. Louis to Denver, carload. 45 cents; less than carload, \$1.60, and from either Denver or Kansas City the L. C. L. rate on household goods to Whitehall is \$1.10 per cwt. Just why this shipment was routed via Denver, we are unable to say, but the complainant is entitled to the most direct route and lowest rate, without any question.

The rate of \$2.35 per cwt., demanded by and paid to defendant is not a railroad rate, but apparently an arbitrary figure calculated to cover the freight charges as well as to compensate the transfer company for handling and storing the shipment, although this has not been satisfactorily explained. In response to claim presented by this Commission to the J. F. F. Co., no explanation was offered as to why an overcharge existed, but refund in the sum of \$9.43 was promptly made; this being based on Kansas City.

Subject: Rate on Coal Helena to Fort Harrison.

Ives-Smith Coal Company,

vs.

Northern Pacific Railway Company.

The above named company, dealers in coal Helena, Montana, made complaint to the Commission on March 16th, 1910, stating that the rate on coal from Roundup to Fort Harrison was only 15 cents higher than the rate to Helena, while coal coming from Gerber mine located on the Great Northern, was charged 60 cents per ton, Helena to the Fort, and asked that the rate from Gerber to Fort Harrison be made 15c over the Helena rate.

Coal from Roundup, which is located on the Chicago, Milwaukee & Puget Sound Railway, is delivered to the Northern Pacific at Lombard, and from that point is handled to destination by the Northern Pacific, on whose tracks Fort Harrison is located, whereas, the Northern Pacific gets no line charge on coal from Gerber or other Great Northern mines; hence it would not be fair to ask the Northern Pacific to practically waive its switching charge on a commodity from which it receives no other revenue.

Possibly 60 cents per ton from Helena to Fort Harrison is too high, but the railway companies were not willing to make any adjustment or name any through rate from Great Northern points, and under date of April 2nd, complainants, the Ives-Smith Coal Co., were so informed by the Commission, and given an opportunity to present a formal complaint if so desired. This has not been done, and we take it that no further action is contemplated.

Subject: Rate on Stone, Etc.

Grover & Leuchars,

vs.

Great Northern Railway Co.

Great Northern tariff 21486 provides rate of $2\frac{1}{2}$ cents per cwt., on rough stone, from Fields and Flood to Great Falls and Black Eagle. It also provides a rate of 1 cent per cwt., from Fields to same destination "on sand rock and clay." The above named complainants engaged in the rock and stone business at Flood, took exception to the 1-cent rate applying from Fields, stating that same was used on building stone and curbing, while they were obliged to pay the $2\frac{1}{2}$ -cent rate on the same commodities.

Investigation developed that this 1-cent rate from Fields was originally put in to cover the movement of crushed sand rock and clay used for lining converters at the Black Eagle smelter, and as a matter of fact its application on building stone and curbing was unfair to the railway company as well as to the complainants in this case, who are competitors for this business. The Great Northern Railway Company was therefore authorized to amend that item in the tariff to read, "sand rock and clay for converter lining only." This places the quarries at Fields and Flood on the same basis, viz., $2\frac{1}{2}$ cents per cwt., on building stone and curbing to Great Falls and Black Eagle, and precludes the possibility of misapplying the low rate of 20c per ton on other than stone intended for the converters at the smelter.

Subject: Weights on Lumber.

Jellison Lumber Company,

vs.

Great Northern Railway Company.

Great Northern cars 74346 and 72728, loaded with lumber, were billed from LaSalle, Montana, to Vaughn, Montana, Sept. 1st and 3rd, 1908, respectively, on which charges were collected on basis of the capacity of cars, in this case 60,000 pounds. Great Northern tariff provides minimum weight on basis of cubical capacity which would be 43,500 pounds on the two cars involved.

Consignee, the Jellison Lumber Company, took the matter up with the Commission on November 17th, 1909, stating so far as they had been able to ascertain, neither of these cars had been weighed at any point enroute, and that the charges had been assessed on the marked capacity of the cars, regardless of actual weight. Our investigation determined that the cars had not been weighed, and this fact being established, it was arranged with the railway company to correct charges, using actual weight as determined from copy of invoice, and on this basis, it was found that there had been an overcharge of \$42.80, which amount was refunded to complainant on June 2, 1910.

Subject: Rate on Coal Butte to Dillon.

City Express & Coal Company,

vs.

Oregon Short Line Railroad Co.

Complainants are dealers in coal doing business in the City of Dillon, Montana, and ordinarily obtain their supply from the Wyoming field served by the Oregon Short Line, but at the time of this complaint, it was impossible to secure shipments of coal from the mines located on the Oregon Short Line, and therefore, complainants made application to the Commission for a through rate from mines located on the Northern Pacific Railway to Dillon, there being no rate except Class "D" in effect from Butte, which would figure \$2.20 per ton, the distance being 69 miles.

This matter was not presented as a formal complaint but upon taking the question up with the Oregon Short Line Railroad, that company was willing to make a commodity rate on coal Butte to Dillon of \$1.25 per ton; this in addition to the local rate into Butte which the Commission considers reasonable, made the combination of locals such as was satisfactory to complainants, and the rate of \$1.25 per ton was established, effective October 1st, 1910.

Subject: Alleged Overcharge on Coal.

City Express & Coal Company, Dillon, Montana,

vs.

Oregon Short Line Railroad Co.

Complainant in this case stated that they received at Dillon, a car loaded with coal from Kemmerer, Wyoming; that the original billed weight was 95,000 pounds on which charges were paid, and that the railroad company had presented a supplementary bill raising the weight to 100,000 pounds, involving additional freight charges of \$8.12, which they claimed to be unjust.

This was a 100,000 pound capacity car, and the tariffs of the Oregon Short Line Railroad Company provide that the minimum on coal shall be the marked capacity of car, except that actual weight will govern when loaded to full visible capacity. The railroad company in this instance took the position that the car was not loaded full, and that they were, therefore, entitled to the additional weight and charges as above.

This Commission had no means of ascertaining whether or not the car was fully loaded, and was therefore without sufficient evidence to render an opinion.

Subject: Alleged Overcharge on Household Goods.

A. T. Peterson,

vs.

Great Northern Railway Company.

Complainant paid freight charges on a car of household goods on basis of minimum 20,000 pounds. Later the railway company presented a supplementary bill amounting to \$9.45 claiming that the net weight of the car in question was 22,100 pounds. Complainant desired information as to whether or not he was obliged to pay this supplementary charge.

The question involved is simply one of the weight of the car. If contents weighed 22,100 pounds as the railway company states, the amended bill as rendered, should be paid which would be in accordance with the published tariffs. In fact, if the railway company saw fit to waive these additional charges, it would be an unlawful discrimination in favor of this particular shipper.

Subject: Classification, Emigrant Movables.

A. J. Dorchester,

vs.

Great Northern Railway Company.

Complainant alleged that he had been overcharged on a car of emigrant movables from Bellevue, Iowa, to Vaughn, Montana, inasmuch as the classification had been raised on a farm wagon, disk, drill and plow contained in the car, which articles were new, but for his own personal use. Complainant took the position that these implements were necessary settlers' articles and as he understood the provisions of the rate quoted him, he was privileged to load in this car any and all requisites to start farming on his arrival at Vaughn. It was necessary to inform complainant that the tariff under which this shipment moved, specifically provided that **new** machinery or implements would not be classified as emigrant movables, and must take their proper rating.

Subject: Milk and Cream Shipments.

Henningsen Produce Company,

vs.

Wells Fargo & Company Express.

Effective July 5th, 1909, the Chicago, Milwaukee & Puget Sound Railway Company published tariff P. C. L. 141-A, applying on milk and cream, naming rates lower than the rates of the Wells Fargo & Company Express operating over the lines of the said C., M. & P. S. Ry. At the same time instructions were issued to all agents that shipments of this commodity would be handled under the railway company's tariff instead of by express as heretofore.

The Henningsen Produce Company of Butte, Montana, complained that they were being assessed the express rates on such shipments subsequent to July 5th. An investigation showed that this was due to misunderstanding on the part of the agents of the express company, and the overcharge, amounting to \$15.76, was refunded to complainants.

Subject: Overcharge on Household Goods.

Ross Elwell,

vs.

Chicago, Milwaukee & Puget Sound Railway Company.

Complainant shipped a car of household goods from Starkweather, N. D., to Lewistown, Montana, and paid freight charges thereon in the sum of \$180.00. Complaint states that the agent at point of origin quoted him through rate of \$107.00 on the shipment which was not, however, the correct rate under the published tariffs, and the fact of the agent having made this error did not release complainant from paying the proper charge under the legal rate. It was found that this shipment had been overcharged \$75.00 by reason of the application of a tariff naming rate from Leads, N. D., to Lewistown, Montana, which had been cancelled prior to forwarding of the car in question from Leads, and in accordance with ruling of the Interstate Commerce Commission, the combination of local rates in effect on date of shipment from initial point, will apply regardless of any such local rates being cancelled while shipment is in transit.

Refund of the overcharge on the above was made to consignee.

Subject: Rate on Ties.

Mike Mungas,

vs.

Northern Pacific Railway Company.

The Northern Pacific Railway Company's rate on ties from Hamilton to Philipsburg is $7\frac{1}{2}$ c per cwt. Complainant was given to understand by the agent at Philipsburg that this rate applied also in the opposite direction, and accordingly shipped several cars of ties from Philipsburg to Missoula, the latter being an intermediate point. It developed, however, that this rate did not apply west-bound, and that the only legal rate that could be charged was Class "E" for 74.3 miles, or 10c per cwt.

When the rates on lumber, etc., were adjusted by this Commission, it was not thought that there would be any movement of these commodities west-bound, hence no rates were provided. There was, however, apparently no good reason why the rate from Philipsburg to Missoula should exceed that from Hamilton to Philipsburg, or from Missoula to Philipsburg, and on taking the matter up with the railway company, it was agreed that the $7\frac{1}{2}$ c rate should be made to apply west-bound, retroactive to April 21st, 1910, the date on which the first car of ties moved. Under this amendment complainant will obtain refund of $2\frac{1}{2}$ c per cwt.

Subject: Overcharge on Motor Wagon.

L. W. Norman,

vs.

Great Northern Railway Co., et al.

Shipment consisted of a motor wagon, knocked down, wrapped and crated, and one crate of fenders, the total weight being 2,030 pounds, Carthage, Ohio, to Conrad, Montana, on which freight charges in the sum of \$115.20 were collected. It was found on investigation that this shipment was properly double first class, or \$4.85 per cwt., making the through charges \$98.46 as against \$115.20 billed. The overcharge of \$16.74 was promptly refunded to complainant by the Great Northern Railway Company, when the matter was brought to their attention by the Commission.

Subject: Rate on Seed Grain.

Montana Hardware Company, Lewistown, Montana,

vs.

Northern Pacific Railway Company, and Chicago, Milwaukee
& Puget Sound Railway Company.

Complaint states that any railroad in Montana would apply one-half rate on grain for seed purposes, but when shipment was transferred to another road, full tariff rate was exacted, which complainants contended was an injustice.

The shipment in question consisted of grain for seed purposes, from Helena, a point on the Northern Pacific Railway, to Lewistown, a station on the Chicago, Milwaukee & Puget Sound Railway, on which third class rate of 59c per cwt. was charged. It is true that on certain kinds of seed, during seeding season, all lines of railroad in this state apply one-half tariff, when destined to a local point, the basic theory being that they will get the haul on the product of this seed, whereas when the point of destination is on a foreign line, the originating carrier company cannot hope for any further revenue on the handling of the crop.

There was apparently no reason why the C., M. & P. S. Co. should not have applied one-half rate on this shipment, but the Northern Pacific could not be requested to do so, and the matter was explained fully to complainants, the Commission offering to take the matter up with the C., M. & P. S. for the purpose of obtaining refund, but the Montana Hardware Company apparently did not wish any further action taken, as our letters of May 11th and June 3rd are still unanswered.

Subject: Rate on Apples, Carloads.

Lindsay & Company,

vs.

Northern Pacific Railway Company.

The above named company of Billings, Montana, shipped a car of apples on October 7th, 1908, and another car on October 4th, 1909, from Fromberg, Montana, to Miles City, Montana. Charges were assessed at rate of 47c per cwt. There was in effect on dates these cars moved a rate of 43c per cwt., and claim was presented to the railway company for refund of 4c per cwt., which claim was declined by the carrier company on the ground that the rate of 43c applied only to L. C. L. shipments.

Matter was referred to this Commission on April 26th, 1910, and immediately taken up with the Northern Pacific Company, requesting reparation in the amount claimed, for the reason that a higher charge cannot be made on carload than on less than carload shipments of the same commodity between same points. The claim was paid in full June 6th.

Subject: Overcharge.

Carbon Mercantile Company,

vs.

Northern Express Company.

The above named company of Red Lodge, Montana, made complaint to the Commission on January 11th, 1910, enclosing some receipted expense bills showing that a shipment of sugar by express from Billings to Red Lodge was charged \$1.10 per cwt., and a shipment of lemons between the same points, same consignee, was charged the general special rate.

The shipment of lemons should properly take the fruit and vegetable tariff and refund was made accordingly. As to the shipment of sugar weighing 1,000 pounds, it was found that the tariff in effect at that time did not provide a special rate in quantities of 500 pounds or over, where the merchandise rate was \$1.10 per cwt., while the classification **did** so provide. It was therefore, arranged with the express company to issue a supplement providing a rate of \$1.00 per cwt. on shipments weighing 500 pounds or more where the merchandise rate is \$1.10. This amendment was made retroactive to the date of the shipment in question, and refund made on that basis.

Subject: Rate on Machinery.

C. R. Stranahan,

vs.

Northern Pacific Railway Co.

Complaint states that a shipment consisting of one compressor and parts, Butte to Alder, Montana, weight less than 16,000 pounds, was assessed the carload rate of 26c per cwt., minimum 24,000 pounds, making the charge \$65.40. Complainant states that there was plenty of room in the car for other freight, and that inasmuch as the shipment weighed only 16,000 pounds he believed that the charge of using the minimum of 24,000 pounds was unjust.

The L. C. L. rate Butte to Alder on this commodity using the actual weight of the shipment, would amount to more than \$65.40, hence the railway company used the lowest rate and complainant was so informed.

Subject: Freight Rate on Coal.

Anaconda Copper Mining Company,

vs.

Montana, Wyoming & Southern Railroad Company.

Order No. 26 of this Commission, dated July 9th, 1909, promulgates rate of 35c per ton on coal in carloads from Bearcreek, Montana, via the Montana, Wyoming & Southern Railroad, to Bridger, Montana, when destined to points beyond.

M. S. Dean, traffic manager of the A. C. M. Co., complained to the Commission on November 11th, 1909, that the said M., W. & S. R. R. refused to accept 35c per ton on coal destined to Anaconda, claiming that it was not their understanding that Anaconda came under the scope of this 35c proportional rate. The Commission was not requested to take any action at that time pending the outcome of claim presented by the A. C. M. Co. against the defendant for overcharge on certain cars of coal, which moved subsequent to the date of Order No. 26, and on which rate of 50c had been assessed.

Under date of April 7th, 1910, Mr. Dean advises that a number of these claims have been settled, some few others are being investigated, and that he has reason to think that the matter will be amicably settled between his company and the said Montana, Wyoming & Southern Railroad.

Subject: Grain Rates.

Montana Elevator Company,

vs.

Chicago, Milwaukee & Puget Sound Railway Company.

The above named complainant reported to the Commission that two cars of wheat screenings, one from Moore and one from Lewistown, destined to Pontiac, Montana, were charged Class "B" rates, which they believed was improper inasmuch as the tariff provides a lower rate than class "B" on mill-stuffs."

Grain screenings being a grain product, should without doubt take no higher than grain rates, and complainant was so informed, and requested to furnish the Commission receipted expense bills. Their reply stated that these shipments were made f. o. b. point of origin, and that the Winnecook Land & Livestock Company, the consignees, had paid the charges, and that the overcharge, if any existed, should be made to the latter. Matter was taken up with the W. L. & L. Co., and under date of January 26th, 1910, they advised that the railway company had promised to straighten these charges out. The Commission's further communications of January 31st and March 9th remain unanswered, and it is our understanding that settlement has been made.

Subject: Minimum Weight on Baled Hay.

Butte Potato & Produce Co., and P. H. Manchester,

vs.

Northern Pacific Railway Company.

Complaints were presented to the Commission by the above named on November 27th, 1909, and February 14th, 1910, respectively, protesting against the Northern Pacific minimum of 9 pounds per cubic foot on baled hay and straw, claiming that it was impossible to load the required minimum into cars of certain dimensions.

Before authorizing the minimum stated above, on the Northern Pacific, the Commission made a very thorough investigation of the size of bales, their weight, and how the greatest number could be placed in a car if the loading were systematically done, and it was found that there was no difficulty in loading a car to a minimum of nine pounds to the cubic foot if the greatest cubical capacity were utilized. On the other hand, if the bales were thrown into the car promiscuously the car would have the appearance from the door of being loaded to "full visible capacity," but of course, when placed on the scales the load was found to be light. The Commission takes the position that the carrier companies are entitled to the fullest loading of their equipment, and in order to determine whether or not the cars in question were properly loaded, we asked complainants to furnish information as to the size and weight of bales, but this data has not been furnished, and we are still of the opinion that had the cars complained of been loaded in such a manner as to contain the greatest number of bales, the prescribed minimum on basis of nine pounds to the cubic foot would have been reached without difficulty.

Subject: Rate on Grain for Seed Purposes.

Lindsay & Company,

vs.

Northern Pacific Railway, and Chicago, Milwaukee & Puget Sound Railway.

The above named complainant, wholesale fruits, produce and cigars, Helena, Great Falls and Billings, Montana, reported to the Commission on February 21st, that there was considerable timothy seed to move from the Judith Basin country into Helena, also a quantity of grass and clover seed to ship from Helena to points in the Judith Basin, but the Northern Pacific would not apply the published rate of one-half tariff on shipments east-bound, and the Chicago, Milwaukee & Puget Sound likewise declined to apply this rate on the shipments west-bound.

To explain the situation we would say that the Judith Basin is served by the C., M. & P. S. Ry., connecting with the Northern Pacific at Lombard; hence shipments from Helena would be handled via Northern Pacific to the junction point, thence via the C., M. & P. S. to destination, and in the opposite direction vice versa.

It is true that on nearly all railroads there is a published rate of one-half tariff, during seeding season, on grain for seed purposes, but this rate is limited to local shipments, the theory being that a carrier will get an additional haul on the product of the seed, whereas when destined to a point on a foreign line, they cannot hope for any further revenue on the handling of the crop.

The complaint in this case called attention to an agreement made with the railway companies when the freight rates from Helena to Lewistown were adjusted, such agreement providing that the rates from Helena would be the same as from Butte, the latter being a local C., M. & P. S. point. This agreement, however, referred to the merchandise rates which are the same from Helena as from Butte to the Judith Basin and Lewistown, but the matter of making special rates on commodities was not bound by any agreement, and in any event the special rate on seed as referred to above, is, we might say, a distinct item by itself.

Subject: Rate on Traction Engine.

A. R. Frame,

vs.

Great Northern Railway Company.

Complainant shipped a traction engine from Great Falls to Hobson via the Great Northern Railway, a distance of 92.5 miles, on which he paid freight charges amounting to \$69.70, which he believed was an excessive charge.

Investigation showed that it was a carload shipment, the minimum weight of 24,000 pounds being applied, which was correct, and the shipment taking class "A" rate of 29c per cwt. figures that the charges assessed were proper in accordance with the authorized tariff.

Subject: Rate on Hay Interstate.

Mrs. S. W. Whittaker,

vs.

Great Northern Railway Company.

On March 10th, 1909, the above named petitioner shipped over the line of the Great Northern Railway, Great Northern car No. 100302, loaded with baled hay from Raynsford, Montana, consigned to the Kalispell Flour Mills Company at Spokane, Washington. Raynsford is a station on the main line of the defendant between Great Falls and Billings, and being a non-agency point, complainant was compelled to seek information of the defendant's agent at Armington as to the rate applicable to the shipment that she desired to make. She was advised that the rate was 25c per cwt., and this in fact was a special commodity rate then in effect from Armington to Spokane, and also to the same destination from Monarch and Neihart, points on a branch line connecting with the main line at Armington.

After the shipment had moved it was ascertained that under defendant's distance tariff the only legally established rate from Raynsford was one of 39c per cwt. The billing was accordingly corrected by the agent at Spokane and charges collected on the shipment to the amount of \$107.64.

The movement being interstate, was not within the jurisdiction of this Commission, and a formal complaint was prepared and presented to the Interstate Commerce Commission at Washington, on October 15th, 1909. The answer of the defendant was that since this shipment moved the tariffs on hay from Montana to Spokane had been revised and a rate of 30c per cwt. had been established from the stations herein referred to, including Raynsford, and upon this basis the defendant was willing to make reparation in the sum of \$34.84. The Interstate Commerce Commission, however, held that Monarch and Neihart in addition to being branch line stations are more distant from Spokane than is Raynsford, and that nothing in the conditions surrounding a shipment from the latter point would justify a higher rate than the current rate from the other two places. Therefore, the rate applied on the complainant's shipment was unreasonable and excessive to the extent that it exceeded the 25c rate then in effect from Mon-

arch and Neihart, and that complainant was entitled to reparation. An order was accordingly made as follows:

"That the above named defendant be and it is hereby ordered and directed on or before the 15th day of April, 1910, to pay unto the complainant, S. W. Whittaker, the sum of \$38.64 with interest thereon at the rate of 6 per cent per annum from April 1st, 1909, as reparation for an unreasonable rate charged for the transportation of one carload of baled hay from Raynsford, Montana, to Spokane, Washington, which rate so charged has been found by this Commission to have been unreasonable, as more fully and at large appears in and by said report of the Commission, which said report is hereby referred to and made a part of this order."

Subject: Rate on Coal.

H. R. Thompson,

vs.

Chicago, Milwaukee & Puget Sound Ry.

The above named, a dealer in coal located at Choteau, Montana, took up with the Commission on January 20th, 1910, the matter of obtaining a freight rate on coal from Roundup, located on the line of the Chicago, Milwaukee & Puget Sound Railway, to Collins, located on the Great Northern Railway, stating that theretofore the people of Collins had been using Lethbridge coal, but were unable now to obtain this.

To ship coal from Roundup to Collins would mean hauling it over the Chicago, Milwaukee & Puget Sound Railway to Butte where it would be delivered to the Great Northern. The mileage via this route would be so great that even though a rate were established via the Great Northern from Butte to Collins on the same basis as other coal rates in the state the freight would be \$3.25 or \$3.30 per ton, which would make the price entirely too high to the consumer.

As soon as weather conditions will permit this spring, the C., M. & P. S. and the G. N. will put in track connections at Judith Gap, and when this is done coal can be moved from Roundup to Collins via Judith Gap connection for about \$2.70, which rate should be satisfactory to this complainant.

November 30th, 1910.—The connection at Judith Gap referred to above, has been put in and the rate of \$2.70 per ton is now in effect.

Subject: Rate on Household Goods.

Jens L. Larsen,

vs.

Chicago, Milwaukee & Puget Sound Ry.

This complaint relates to shipment of household goods from Miles City to Ryegate, Montana, charges assessed in accordance with published tariff 38c per cwt., which was alleged to be excessive inasmuch as the rate from St. Paul to Ryegate, a much greater distance, was 36c per cwt.

The rate from St. Paul on household goods is very low when viewed on a ton per mile basis, but this Commission ruled that the Montana local rate should not exceed the through St. Paul rate, and accordingly the railway company issued a supplement to tariff, making the St. Paul rate apply as a maximum in Montana, retroactive to the date of the Larsen shipment, and refund was made on a basis of 36c.

Subject: Coal Rates to Washington and Idaho Points.

Sewell Davis,

vs.

Northern Pacific Railway, and Montana, Wyoming & Southern Railroad.

Sewell Davis of Butte, Montana, representing the Bearcreek Coal Company, complained with reference to the adjustment of coal rates from Bearcreek, Montana, to stations on the Northern Pacific in Washington and Idaho. Prior to this time the complainant had negotiated with the Northern Pacific and also with this Commission with a view to securing a readjustment of the rates in question, and upon the supposition that such readjustment would be made, solicited and secured contracts for a considerable amount of coal at Lewiston, Idaho, Spokane, Pullman, Uniontown, Walla Walla and other places. A readjustment was made from Bearcreek to Spokane, the rate being reduced from \$4.20 to \$3.50 per ton, thereby enabling the Bearcreek coal to be placed on the Spokane market in competition with coal from Monarch, Sheridan and other Wyoming mines. However, little if any change was made in the rates to other points in Washington, in proximity to Spokane, whereas the Wyoming fields, to certain territory in that vicinity, had been accorded the Spokane rate, or a slight advance.

Upon receipt of this complaint negotiations were instituted with the Northern Pacific Railway and the Montana, Wyoming & Southern with a view to having the Bearcreek mines placed on a fair competitive basis with Wyoming in the Washington territory. The M. W. & S. refused to accept less than 45c per ton on this business, whereas on Montana state traffic under order of the Commission, it accepts 35c per ton. It therefore devolved upon the Northern Pacific Railway Company to make the necessary readjustment, and effective March 20th, 1910, the said Northern Pacific Company published a new tariff by which material reductions were made in the transportation charges from Bearcreek to Washington and Idaho territory on this commodity, and have satisfied, we believe, the complaint made.

This movement being interstate, the Commission was without jurisdiction. It is thought, however, that the readjustment of rates as accomplished will aid materially in increasing the output of the Montana coal fields.

Subject: Rate on Wood.

Fred D. Whistler,

vs.

Northern Pacific Railway Co.

The above named made complaint against the Northern Pacific rate of 80c per cord on wood Missoula to Riddle's Spur, located 4.1 miles west of Missoula. This being outside the yard limits, switching rates would not apply, and the quotation of 80c per cord is the distance tariff rate for 15 miles or less.

It developed that the wood in question originated at some point of which we are not advised on the line of the Chicago, Milwaukee & Puget Sound Railway, and delivered to the Northern Pacific at Missoula for movement to Riddle's Spur. Complainant appeared to be of the opinion that there should be a through rate, but this is not warranted by the conditions as there has never been any movement of wood between the two lines, there being an ample supply located along the Northern Pacific, and in view of the extremely short haul from Missoula to Riddle's Spur, a charge of 80c per cord, minimum 12 cords per car, is not thought to be unreasonable.

Subject: Rates on Coal.

E. W. Woolverton,

vs.

Great Northern Railway Co. and Connections.

The above named complained to the Commission that he had been obliged to pay \$2.60 per ton freight charges on coal from Bearcreek, Montana, to Wickes, Montana, and asked to be advised of the proper rate. The Commission replied that the correct charge was \$2.45 per ton, and offered its assistance in adjustment of this matter. Mr. Woolverton later advised that he had been so far unable to procure the original paid expense bills, since which time we have heard nothing further. We understand, however, indirectly, that the railway company made settlement with him direct.

Subject: Express Rates.

Alex Burrell,

vs.

Great Northern Express Company.

The above named complainant received a package of merchandise weighing twenty pounds, Chicago to Collins, Montana, on which he paid \$2.50 charges, and claimed that this amount was \$1.00 in excess of the proper rate.

It was found that the rate charged was correct in accordance with published tariffs which provide Chicago to St. Paul 85c graduate on 20 pounds; St. Paul to Collins \$1.65 on same shipment, making the through rate \$2.50 as assessed.

Subject: Rate on Fruit.

H. L. Keene & Son,

vs.

Northern Express Company.

A shipment of fruit was made Sept. 27th, 1909, Stevensville to Townsend, weight 325 pounds, charges collected \$5.70. Consignee complained to the Commission that he had reason to think the charge was excessive, and it was found that the general special rate of \$1.75 per cwt. was used instead of the special fruit rate of \$1.20, making an overcharge of \$1.80. Refund of this amount was made to complainant on Feb. 10th.

Subject: Rate on Coal.

John J. Haab,

vs.

Great Northern Railway Co.

N. P. car 5284, coal, Bearcreek to Clancy, consigned to the above named, was billed locally to Helena, thence the Great Northern local rate of 75c per ton to destination. N. P. Tariff 87 D. names a through rate from Bridger to Fuller, and Clancy being an intermediate station, should take the same rate, hence the shipment was overcharged, and refund was made Feb. 11th.

Subject: Rate on Scrap Iron.

C. S. Caird,

vs.

Chicago, Milwaukee & Puget Sound Ry. Co. and Northern
Pacific Railway Co.

From Lewistown to Butte, distance 247.6 miles, the rate via C., M. & P. S. Ry. on scrap iron is 12c per cwt., while from Lewistown to Helena, distance 208.8 miles, the rate via C., M. & P. S. and Northern Pacific is 21c per cwt., the former's mileage being 155.3, the latter 53.5.

Complainant avers that the above constitutes a discrimination in favor of Butte and prays for relief.

Lewistown and Butte are local C., M. & P. S. points while from Lewistown to Helena the movement would be C., M. & P. S. to Lombard Junction, thence Northern Pacific to destination. The Chicago, Milwaukee & Puget Sound Railway Company, on whose line this business originates, has seen fit, however, to make the same rate to Helena as to Butte, much to the satisfaction of the complainant.

Subject: Rate on Coal to Dillon, Montana.

People of Dillon, Montana,

vs.

Great Northern Railway Company, and Oregon Short Line
Railway Co.

On account of snow blockade and other conditions, Dillon was unable to receive supply of coal from the south via the Oregon Short Line, and on January 18th, 1910, wired the Commission to make rate on coal from Stockett and Sand Coulee, on the line of the Great Northern in the northern part of the state, there being no rate except class "D" from Butte to Dillon, which would make the through rate \$3.65 per ton.

It was arranged to establish rate of \$1.00 per ton from Butte, as a temporary measure, effective at once; this making the through rate \$2.45, which was very satisfactory to complainants.

Subject: Rate on Stucco and Gypsum to Great Falls.

Montana Hard Wall Plaster Co.,

vs.

Great Northern Railway Company.

The complainant company operates a stucco mill at Monarch, Montana, the United States Gypsum Company operates one at Great Falls; the latter obtains its supply of raw material (gypsum) at Riceville, while the former gets it close to the Monarch plant, that is, they do not have to haul the raw material by rail. The freight rate on gypsum from Riceville to Great Falls, distance 39 miles, is two cents per cwt. The rate on stucco from Monarch to Great Falls, distance 53.1 miles, is $7\frac{1}{2}$ c per cwt. Complainants aver that they are unable to market their product in Great Falls owing to this differential.

To points beyond Great Falls on the line of the Great Northern Railway, Monarch enjoys the same rates on stucco as the Great Falls mill, thus giving complainants an advantage as they do not pay freight on the raw material to their plant. Gypsum rock is worth not to exceed \$2.00 while the finished product (stucco) is worth \$8.00 to \$10.00 per ton. The former is practically indestructible, while the latter is susceptible to damage by rain or otherwise exposed to the elements.

The Commission can readily see wherein the M. H. P. Co. could not successfully compete with the U. S. G. Co. for local Great Falls trade, nor does it seem that they should reasonably expect to do so, but to points beyond Great Falls the rates are on a parity.

The Board takes the position that the rate of $7\frac{1}{2}$ c on stucco, Monarch to Great Falls, has not been shown to be unreasonable for the service, and in view of the facts related above, there does not appear to be good ground for complaint, of which decision complainant company has been advised.

Subject: Coal Rates From Japan, Montana.

Carpenter Creek Coal Company,

vs.

Chicago, Milwaukee & Puget Sound Ry.

The above named complainant reported to the Commission on November 2nd, 1909, that they were about ready to ship coal from their mine at Japan, but no freight rates had been arranged although the railway company had promised to do so.

A satisfactory schedule was made effective November 20th, but we understand that the mine was closed December 1st owing to other difficulties.

Subject: Rates on Coal, Shields River Branch.

The A. W. Miles Company,

vs.

Northern Pacific Railway Co.

The Shields River Branch of the Northern Pacific Railway was completed and turned over to the operating department about December 1st, 1909. This branch connects with the main line at a point two miles west of Mission and follows the Shields River for a distance of about 15 miles to Clyde Park.

On January 21st, the above named company complained that they were obliged to pay Class "D" rate on coal from Livingston to Clyde Park and protested that the charge was exorbitant for the service rendered. The Commission had the matter of coal rates on this branch line up with the Northern Pacific Railway Company since November 23rd. The railway company, however, was not disposed to accept the schedule submitted by the Commission and insisted that they were entitled to a higher rate on account of this being a new line, a sparsely settled country, difficult operation, etc. The Commission's proposition was to make the rates on coal to points on this branch on the same basis as the coal rates established on all lines in the state by order of this Board, and could not concur in the railway company's position that the charges to Shields River branch points should be considerably higher.

The railway company accepted the Commission's schedule and tariff become effective February 3rd, 1910.

Subject: Rate on Wood Into Missoula.

Fred D. Whistler,

vs.

Chicago, Milwaukee & Puget Sound Ry. Co.

The above named complained to the Commission on November 26th, 1909, stating that he had 500 cords of slab wood to move from Cobden, Montana, to Missoula; that the C. M. & P. S. Ry. Company's rate was \$1.62½ per cord, while the Northern Pacific rate was \$1.00 for a longer haul, viz., Iron Mountain to Missoula, said Northern Pacific rates having been established by this Board on a mileage basis.

The defendant railway company complied with the Commission's request to establish the Northern Pacific scale, same becoming effective December, 17th, 1909.

PART III.

During the year the Commission has received advice of, and has investigated either on the ground at the scene of the accident or from testimony of witnesses, depending upon the nature of the casualty, the following number of train accidents involving loss of life or personal injury to the extent that the services of a physician were required in accordance with Section 16 A, Chapter 37, Laws of 1907:—

Road.	Employees		Other Than Employees	
	Killed	Injured	Killed	Injured
Northern Pacific Ry.	25	196	31	61
Great Northern Ry.	28	269	16	59
Butte, Anaconda & Pacific Ry.	1	17	..	2
Chicago, Milwaukee & Puget Sound Ry.	10	41	2	7
Oregon Short Line Railroad	1	1	..	..
Chicago, Burlington & Quincy R. R.	2	9	2	3
Montana, Wyoming & Southern R. R. ....	..	1	..	..
Montana Western Ry. ....	..	..	..	..
Gilmore & Pittsburgh Railroad ....	..	..	..	..
Total	67	534	51	132

A brief review of the more important accidents is given below, showing the cause in each instance, together with the Commission's views on Block System as a means to minimize the number of collisions, which it will be apparent are conspicuously in evidence during the period covered by this report.

Great Northern Railway—Montana Division.

November 12th, 1909, train No. 401, time freight, switching at the west end of Havre yard, on the time of east-bound passenger train No. 4, overlooked the latter, and brakeman threw the switch preparatory to pulling out on the main line. The view was obstructed by box cars standing on other tracks, and train No. 4 collided head on with train No. 401, engine 1547, on the lead track.

Twelve employes and eight passengers more or less seriously injured, none fatally, and damage to property was not excessive. Cause of accident forgetfulness on the part of the employe who threw the switch apparently just ahead of the passenger train.

Chicago, Milwaukee & Puget Sound Railway—Musselshell Division.

December 16th, 1909, about 12:20 p. m., one mile east of Vananda, C., M. & P. S. engine 476 exploded, instantly killing Engineer James Marker and Head Brakeman J. E. Bowman; Fireman Frank H. Walters received injuries from which he died a few days later without regaining consciousness.

The three men above named were the only ones on the engine at the time of the accident, consequently there was no means of obtaining information as to what the water glass in the engine indicated. There was found to be plenty of water in the tank, and an inspection of the boiler showed that the crown sheet was torn out and bent back over the fire box door; both side sheets were ripped, the top of the flue sheet was bent at the flange and about two rows of flues pulled out. The condition of the crown sheet showed plainly that the explosion was caused by low water and was blue from the heat for about nine inches, indicating that the water in the boiler was nine inches below the crown sheet when it exploded.

The radial stays were intact, having been pulled through the crown sheet. There were no indications of broken bolts or otherwise defective. There were four broken stay bolts in the side sheets. There was no mud found anywhere. The flues were clean and the boiler had been washed out at Miles City just previous to going out on this trip. This boiler was tested August 27th, 1909. The stay bolts were also tested at that time, and again November 12th. On the latter date the boiler was inspected and reported in first class condition.

It will never be known whether the engineer forgot the water in the boiler or whether some defect caused water to show in the indicator glass when in reality the crown sheet was uncovered.

Great Northern Railway—Kalispell Division.

December 20th, 1909, passenger train No. 43, west-bound, was completely derailed, together with the engine, between switches at Volcour, Montana. Train consisted of engine 1446, combination baggage and express car, two C., B. & Q. coaches, diner, combination smoker and one Pullman sleeper. Damage to equipment estimated at \$5,591.00. Three passengers five trainmen and other employes injured, none fatally.

This accident happened on a curve of about one degree, engine trailer dropping off inside the rail, no apparent defect in equipment or track which was fully tie-plated. The ground was frozen solid, and our investigation would indicate that the derailment was caused by high speed.

Great Northern Railway—Butte Division.

East-bound passenger train No. 44 collided with extra 1232 west, one and one-half miles east of Oxford, and 4.9 miles west of Bercail, at 10:10 p. m. December 31st, 1909, resulting in the death of Homer Sayles, fireman, and Augustus Gibson, mail clerk; more or less seriously injuring Carl O'Neill, conductor, W. F. Freeman, brakeman, and Engineer Fred H. Potts; property damaged to the extent of \$16,830.00.

Engine 1232, east-bound, reached Franklin station, about 32 miles east of the point of accident, and reported by telephone to the dispatcher that the engine was unable to take the train any farther. The dispatcher gave the conductor an order over the telephone to return to Judith Gap with his engine and caboose, and another order stating that train No. 44 would run six hours late, Judith Gap to G. N. Junction.

Extra 1232 west passed Hedges, which is the first telegraph office west of Franklin at 6:00 p. m., and at that time a snow storm had just started. The distance from Hedges to Judith Gap is 20.3 miles. Between these points there are two passing tracks, viz., Bercail and Oxford, both of which are provided with telephone service, but no operator. This extra west stuck in the snow at the point where the accident happened at 7:15 p. m., the collision occurring, as will be noted, at 10:10 p. m. In other words, the extra was stuck in the snow for two hours and 55 minutes before No. 44 hit it. The storm had developed into a severe blizzard and the crew of the extra claim to have done everything possible in the face of the weather conditions to protect their train by flag. The engineer of the passenger train, however, claims that he struck torpedoes only a few car lengths from the point of the wreck; that he immediately applied the emergency brakes and almost instantly the collision followed. The storm was so bad that the crew of the extra state they could not tell in the darkness and blinding snow whether they were walking on the track or not, and one of the brakemen states that while he supposed he was following the track for the purpose of flagging the approaching train, he found himself on the outer edge of the right of way up against a barb wire fence. It was impossible to keep a lantern burning.

The railway company holds the crew on the extra west entirely responsible for not having protected their train by flag,

and the evidence would indicate that even though the storm was very bad, the flagman could have gone out a sufficient distance and displayed danger signals ahead of No. 44. The Commission is not satisfied, however, that the responsibility rests entirely with this crew. It would seem as though the dispatcher neglected to exercise additional precaution at such a time and in view of the unusual severity of the storm of which he was advised.

Train No. 44 left Judith Gap at 9:52 p. m. seven hours and 22 minutes late. It will be noted that extra 1232 west left Hedges three hours and 52 minutes prior to the time that No. 44 left Judith Gap. The extra had orders that No. 44 was running 6 hours late. This would give them until 8:49 to make Bercail, 8:37 to make Oxford, and 8:25 at Judith Gap. The dispatcher heard nothing from the extra west after it left Hedges at 6 o'clock, and states that he supposed they were either in on the passing track at Bercail or Oxford. This conclusion the Commission does not consider is fully warranted for the reason that if the extra had been on the passing track at Bercail when No. 44 left Judith Gap, it would mean that they had been there at least since 8:49, over an hour, but did not call up the dispatcher on the telephone for further orders or help against the passenger train, which is the custom in such cases. The same remarks apply to Oxford, except that had the extra been there they must have arrived at Oxford not later than 8:37, or an hour and fifteen minutes before No. 44 left Judith Gap, as it will be remembered that the extra west had only six hours on No. 44, although the latter was considerably later than this.

The Commission believes that the dispatcher should have exercised some extra precaution in view of the storm and the fact that this train had left Hedges almost four hours before and nothing had been heard from them. Engine 1232 was not disabled entirely, having a broken brass in the main pin bearing. It was good for 10 miles an hour, which would mean to arrive at Judith Gap about 8 o'clock, had it not been for the blizzard, and while this Commission does not fully concur with the railway company in the placing of responsibility, it cannot be denied that **block system** would have prevented the accident, as the passenger train could not have left Judith Gap until extra 1232 had arrived or reported into clear.

Great Northern Railway—Butte Division.

Extra 1138 West, running away, struck the rear of passenger train No. 237 in Butte at 11:40 P. M., February 19th, 1910, injuring six persons, none fatally, and causing damage to equipment amounting to \$6,952.00.

Extra 1138 West with helper engine 1096 on the rear just ahead of the caboose, consisted of three loads and ten empties, 285 tons gross. Passenger train 237 passed Extra 1138 West at Woodville at 10:55 p. m. Woodville is the summit of the mountain grade. This extra left Woodville at 11.10 P. M., or 15 minutes behind the passenger train, the latter being due to leave Mountain Junction, 4.9 miles west of Woodville, at 11:10 P. M., the operation being not to permit a train to leave Woodville until the train ahead has left Mountain Junction.

When about one mile east of Mountain Junction, engineer on engine 1138 lost control of the air brakes, claiming that the air was frozen up on the engine. When the engineer on helper 1096 discovered by his gauge that the air was gone, he reversed his engine, and in so doing, broke the train in two, between the second and third cars from the rear. That portion of the train was brought to a standstill, but the head-end ran away and collided with the rear of train 237 in Butte yard after No. 237 had been to the platform and unloaded its passengers; otherwise the list of casualties would probably have been much greater.

The investigation shows that the engineer on Engine 1138 did not reverse at any time, claiming that he could not do so, but apparently there was no reason why his engine could not have been put in the reverse motion if sufficient effort had been made. Had he done this, there seems to be little doubt that he could have stopped the runaway part of the train, as it will be noted that besides the engine there were only 10 empty cars, and one loaded, approximately 200 gross tons. An air inspection of this train was made at Woodville, and at that time, the air was cut through and working on all cars and helper engine, and it is probable that the air froze up after leaving Woodville, as the engineer states. This engineer, however, did not whistle for brakes at any time. There was one trainman on the runaway portion, but no hand brakes were set. The air was not set from the caboose as might have been

expected. Had the conductor or brakeman been watching the gauge, it would likely have been discovered that the train line pressure was getting low, and even though the air was frozen up on the engine, the emergency valve in the caboose might have been used to set the brakes on the train. Why this was not done has not been satisfactorily explained.

It would appear that the cause of this runaway was owing to the engineer on the head-end not calling for brakes when he discovered that he had lost control of air. Second, that the train might have been stopped by reversing his engine, and third, that the train crew was not exercising due precaution on a mountain grade, as the gauge in the caboose would have showed the pending danger, and the train brought to a stop by the use of the conductor's emergency valve, before the train line pressure became exhausted.

Northern Pacific Railway—Idaho Division.

West-bound passenger train No. 7 was derailed one and one-half miles east of Eddy, Montana, about 6 o'clock, A. M., March 4th, 1910; thirty passengers and four employes slightly injured, none seriously; property damaged to the extent of \$8,900.00.

The weather had turned suddenly warm accompanied by rain and during the night the snow had melted in the hills undermining the roadbed some ten or twelve feet below the bottom of the ties. The defect was not visible on the surface, but when the train in question struck the weakened roadbed, it caved in derailing the train and engine. The baggage car took fire and was destroyed together with its contents. It was very fortunate that this accident was not attended with more serious personal injuries. No responsibility is attributed to the railway company.

Chicago, Burlington & Quincy Railroad—Sheridan Division.

West-bound passenger train No. 43 collided with rear end of Extra No. 3170 west, about $1\frac{1}{2}$ miles east of Toluca, 4:20 A. M., April 14, 1910, killing Brakeman J. L. Patterson and seriously injuring Conductor C. Jackson, both of whom were in the caboose at the time of the collision.

Train No. 43 was on time or practically so and is due at Toluca at 4:23 A. M.. Extra No. 3170 west, passed Peritsa at approximately 3:20 A. M. Peritsa is the first station east of Toluca and distant therefrom 9.19 miles. This would give the extra west 58 minutes to make the run of 9.19 miles to Toluca and clear the passenger train five minutes. After leaving Peritsa, the investigation shows that Engine No. 3170 was not steaming, and when a point three miles east of Toluca was reached, the engineer seeing that he was going to be unable to clear the passenger train's time, whistled out a flag to protect the rear of his train against No. 43. The collision happened as stated above at 4:20 A. M., hence it will be obvious that the freight train had no right to the track without being protected. The engineer of Train No. 43 did not find any flagman, neither did he strike any torpedoes or see any fuses, and it is very evident that none were displayed.

Block system is not in operation on that district. There is a rule of the railroad company's instructing that a freight train must not leave a telegraph or telephone station ahead of a passenger train unless the freight train has sufficient time to reach the next telegraph or telephone station without interfering with the passenger's time. This is an operating department rule in effect on, we think, every railroad, but does not afford the protection of a block, and as in this case when "something happens" failure of a flagman to perform his duty, results in disaster. Block system would have saved this wreck, as under its operation, the passenger train could not have entered the block at Peritsa until the freight train had cleared the block at Toluca regardless of what might have happened to it between these stations, or how long it might have been delayed.

Northern Pacific Railway—Rocky Mountain Division.

Extra 1517 west, collided with Work Extra 1317 at Frenchtown, Montana, 6:30 P. M., June 9th, 1910, killing Engineer R. K. McKenzie of the work train and slightly injuring Fireman Charles Skelly.

Work Extra 1317 had orders to "work between DeSmet and Lothrop 6 A. M., until 9:30 P. M., protecting themselves." This work train was engaged in hauling gravel from a pit located about one mile west of Frenchtown, from which point there was telephone connection with the depot, and a flagman was left at the depot where the conductor might have communication with him and keep posted as to the movement of trains.

It was customary for work Extra 1317 to tie up at Frenchtown at night, and on the date in question, 6:30 P. M., they were coming in for the night. Flagman was at the depot and saw Extra 1517 west was coming, and at the same time saw the work train approaching the west end of the yard. The latter's engine was backing up, and the flagman supposed they were going in either on the west end of the passing track, or the west end of the house track, but when he saw that they were coming up the main line, he flagged them. Apparently neither the engineer nor his fireman were looking out, as his flag was not answered, neither did the work train make any effort to stop, but passed the depot, and as they did so, flagman caught the rear of the caboose, and only had time to yell at the crew to jump.

Extra 1517, after whistling for Frenchtown, shut off, and was drifting around a slight curve at a speed of about 8 to 10 miles an hour, when they discovered that the work train was not into clear as they supposed. Extra 1517 could have stopped before striking the work train, but the latter kept on coming towards them with the result that the tank of Engine 1317 was stove in, pinning engineer McKenzie under it, killing him almost instantly.

The investigation clearly indicates that the crew on Engine 1317 was not looking out. They were properly flagged and the view is clear for over a mile. There would have been no collision if the engineer of the work train had looked where he was going, and the indications are that he never shut off at all, and did not know that the other train was approaching until it hit him.

Great Northern Railway—Kalispell Division.

At 5:12 A. M., June 11th, 1910, east-bound passenger train No. 44 struck the caboose of Extra 1916 east, at Browning, Montana, on the Kalispell Division of the Great Northern Railway, resulting in injury to six passengers on train No. 44, and in the death of fireman Harry Hall and brakeman R. Switzer who were deadheading and were asleep in the caboose at the time of the accident.

The wye switch leading off of the passing track was set for the wye, hence Extra 1916 headed in on the wye before it was discovered that the switch was wrong. There were cars standing on this wye which prevented the extra from pulling up so that the rear end of the train would clear the main line.

East-bound passenger train No. 44, was due out of Durham, the next station west of Browning, at 5:02 A. M. This extra arrived at Browning at 5 o'clock, and the collision occurred at 5:12. When the engineer discovered that he could not pull his train into clear, he immediately whistled out a flag to protect the hind end against No. 44. The flagman, however, failed to properly perform his duty, and while he had, as will be observed, 12 minutes in which to go back with danger signals and stop No. 44, he remained within a few car lengths of the caboose until he heard 44 approaching, and then it was too late for him to go back far enough to prevent the collision. This flagman immediately left the country, which is evidence that he was conscious of his responsibility.

The operation of **positive block system** would have prevented the accident and saved the lives of these two men.

Great Northern Railway—Kalispell Division.

East-bound passenger train No. 44 and west-bound passenger train No. 3, collided head on one mile west of Bombay, Montana, at 7:40 A. M., August 3rd, 1910, slightly injuring four train men and badly shaking up a number of passengers. Fortunately this wreck was not attended with any serious results.

Train No. 44, held an order that No. 3 would run fifty minutes late Cut Bank to Summit. No. 3 in this case was the ruling train and No. 44 was making its own meeting point with No. 3 on this run-late order. The Engineer on No. 44 explains the error by his mistake in figuring No. 3's time at Bombay instead of Blackfoot, the latter being the next station west. The conductor of the train should have detected the engineer's error as he is held equally responsible, but the mistake was not discovered in time to avoid the collision.

It should be understood that these two trains were not given a positive meeting point by the dispatcher and No. 44 had a right to go to Bombay if the time that it had on No. 3 would so permit. The Commission's investigation inquired from the railway company whether or not it was now or had been in the past, the practice to give passenger trains a "positive meet," and we are informed that this is not being done for the reason that it causes delay to the fast trains and that in this instance No. 44 was entirely responsible for the mistake, which the Commission admits to be true under the system of operation. The railway company further states that in their opinion the engineer of No. 44 entirely overlooked No. 3, and that the explanation of figuring time at the wrong station was only an excuse, and that a positive meet order would not have helped matters any.

It will hardly be questioned, allowing that the engineer's story is correct, that a meet order at Blackfoot would have avoided the accident, as it would not have been necessary for the engineer by the dim light in the cab to have consulted his time card and figured how far he could go, nor can we agree with the railway company that a meet order would not have averted the collision, allowing that No. 44 did overlook No. 3 entirely, for if such was the case it seems to us entirely reasonable to suppose that an order handed to the engineer of No. 44 to meet No. 3 at Blackfoot would have at

once brought this train to his attention, if for any reason it had slipped his mind.

On some lines of railroad it is the practice for the sole purpose of guarding against accidents of this nature, to give passenger trains a meeting order, and there is no question in the mind of this Board that had this been done these trains would not have gotten together, and we are firmly convinced and always have been that the ominous practice of allowing passenger trains to figure their own meeting point, is inviting danger, and does not afford the traveling public the protection that they should have and could have by the adoption of methods here suggested.

In connection with this investigation the Commission would refer to pages 166 to 171 inclusive, annual report for 1909, "Safety in Operation." Block system would have prevented this collision as No. 44 having entered the block at Blackfoot, regardless of its rights, would preclude the possibility of No. 3 passing Bombay until No. 44 had arrived at that station.

Great Northern Railway—Montana Division.

East-bound passenger train No. 2, the Oriental Limited, was derailed one and one-half miles west of Rudyard, Montana, 7:55 A. M., August 21st, 1910, resulting in injury to five passengers and two trainmen; estimated damage to equipment \$1,350.00.

Section crew was engaged in putting on tie plates, and the foreman had sent a flagman out to flag and warn all approaching trains. When No. 2 approached this point, the section crew had just removed a rail and the flagman apparently did not make it plain to the engineer on No. 2, the purpose of his flag. This resulted in train approaching point of accident at too high rate of speed for safety, and when the danger was discovered, the engineer did not have time to bring his train to a stop, resulting in derailment of the engine and three cars.

Northern Pacific Railway—Rocky Mountain Division.

Northern Pacific Engine No. 1565 west-bound, blew up at 5:50 A. M., Sept. 30th, 1910, about six hundred feet west of the west switch at Chester, Montana, on the Couer d'Alene branch of the Northern Pacific Railway, resulting in the death of Fireman Starr B. Robertson and injury to Engineer W. Owens and Brakeman G. D. Connors.

This engine was pulling a train of 43 cars, 1720 gross tons, and at the point indicated above, the crown sheet in the fire box and the combustion chamber dropped down causing the explosion, throwing the engine and two cars down the embankment.

The railway company assigns as the reason for this explosion, "low water in boiler," while the testimony of Engineer Owens before the coroner's jury, is to the effect that such could not possibly have been the case as both injectors were in good working order; that he had plenty of water in the tank and that his water glass and guage cocks which he had every reason to believe were in proper working condition, indicated that there was an ample supply of water in the boiler at all times, and at the time of the accident.

The testimony of the railway company's representative showed that this engine had a general overhauling in April, 1909; that the last bolt test was made August 10, 1910, and at that time there were no stay bolts found to be broken or defective.

Great Northern Railway—Kalispell Division.

East-bound passenger train No. 44 and west-bound freight train No. 435, collided head-on at 4:42 A. M., October 15th, 1910, about 2600 feet east of the depot at Browning.

Train No. 44 had an order of which train No. 435 had a copy, instructing that train No. 44 would "wait at Browning until 4:40 A. M., for No. 435." Under this order No. 435 being an inferior train should have been into clear at Browning not later than 4:35 A. M., that is, clearing the superior train's leaving time five minutes. The passenger train No. 44, left Browning at 4:40 A. M., and the collision occurred at 4:42. On each side of the point of accident curves and deep cuts obstructed the view of the enginemen, and they did not see each other until just before they struck.

This collision resulted in injury to four train and engine men, and was the result of an inferior train being on the time of a superior train without being protected by flag in accordance with transportation rules. The responsibility rests with the crew of train No. 435 for not "protecting themselves," but the accident could not have taken place had block system been in operation, as the two trains could not have been in the same block, at the same time regardless of the rights of either one.

PART IV.

BEFORE THE RAILROAD COMMISSION OF MONTANA.

In the Matter of Adopting the "Uniform Code" of Demurrage
Rules and Regulations.

Hearing, Sept. 7th, 1910. Decided, Sept. 20th, 1910.

REPORT AND ORDER OF THE COMMISSION.

Number 39.

The Committee on Car Service and Demurrage, composed of one member from each state and a representative from the Interstate Commerce Commission, presented to the twenty-first annual convention of the National Association of Railway Commissioners at Washington, D. C., in Oct. 1909, its report together with a proposed schedule of demurrage charges, rules and regulations, known as the "Uniform Code" to apply alike on state and interstate transportation, said uniform code being adopted by a majority vote of the convention. For complete report on this subject see pages 217 to 260 of this Commission's annual report year ending November 30th, 1909, which in addition to quoting the new rules in full, expresses the opinion of this Board on the subject and requesting the Montana shippers to give the matter careful consideration to determine at a later date whether or not our Montana demurrage rules should be in any way modified. Since January 1st last, a number of informal conferences were had with the Montana Demurrage Bureau, the latter being naturally anxious to avoid two sets of rules, one applying on state, the other on interstate movements, and in June many of the commercial bodies of the larger cities petitioned this Board to adopt the said uniform code believing that its provisions would operate more satisfactorily to the people than under the present schedule.

A circular letter gotten out by the Commission dated August 25th, announced that a public hearing would be held September 7th, and cited some of the more important features of both the present and proposed codes. Immediately following this, some of the commercial bodies above referred to rescinded their former petition, giving as their reason that they had not here-

tofore fully understood the new rules as a whole, but only certain sections thereof.

This hearing was largely attended by representatives of the railroads, the Montana Demurrage Bureau, and by the shipping interests of the state. Objections were raised to the abolition of the seventy-two hours free time on commodities which this state has enjoyed, but apart from this feature, the differences were not material and it was mutually agreed that the seventy-two hours on commodities hereinafter named, should obtain, and that with a few other slight modifications, the "uniform code" would be adopted in Montana.

Order.

Therefore, IT IS HEREBY ORDERED, that the following schedule of demurrage charges, rules and regulations shall become effective on all lines of railroad operating in Montana, October 15th, 1910, applicable on all intrastate shipments, and shall so remain in effect until the further order or approval of this Commission.

The Secretary is directed to serve upon each of the following carriers, a true and certified copy of this Report and Order:

Northern Pacific Railway Company.
Great Northern Railway Company.
Chicago, Milwaukee & Puget Sound Ry. Co.
Chicago, Burlington & Quincy Railroad Co.
Oregon Short Line Railroad Company.
Butte, Anaconda & Pacific Railway Co.
Montana, Wyoming & Southern Railroad Co.
Montana Western Railway Company.
Gilmore & Pittsburg Railroad Company.

RULE 1.

Cars Subject to Rules.

Cars held for or by consignors or consignees for loading, unloading, forwarding directions, or for any other purpose, are subject to these Demurrage Rules, except as follows:

- (a) Cars loaded with live stock.
- (b) Empty cars placed for loading coal at mines or mine sidings, or coke at coke ovens.
- (c) Empty private cars stored on carrier's or private tracks, provided such cars have not been placed or tendered for loading on the orders of a shipper.

Note.—Private cars while in railroad service, whether on carrier's or private tracks, are subject to these Demurrage Rules to the same extent as cars of railroad ownership.

(Empty private cars are in railroad service from the time they are placed by the carrier for loading or tendered for loading on the orders of a shipper. Private cars under lading are in railroad service until the lading is removed and cars are regularly released. Cars which belong to an industry performing its own switching service are in railroad service from the time they are placed by the industry upon designated interchange tracks, and thereby tendered to the carrier for movement. If such cars are subsequently returned empty they are out of service when withdrawn by the industry from the interchange; if returned under load, railroad service is not at an end until the lading is duly removed.)

RULE. 2.

Free Time Allowed.

(a) Forty-eight hours (two days) free time will be allowed for loading or unloading on all commodities, excepting ore, (including concentrates), lumber, stulls, lagging, coal, coke, lime, lime rock. On these commodities seventy-two hours free time shall be given for unloading.

(b) Twenty-four hours (one day) free time will be allowed.

1. When cars are held for reconsignment or switching orders.

2. When cars destined for delivery to or for forwarding by a connecting line are held for surrender of bill of lading or for payment of lawful freight charges.

3. When cars are held in transit and placed for inspection or grading.

(c) Cars containing freight for trans-shipment to vessel will be allowed such free time at the ports as may be provided in the tariffs of the carriers.

RULE 3.

Computing Time.

Note:—In computing time Sundays and legal holidays (National, State or Municipal) will be excluded. When a legal holiday falls on a Sunday, the following Monday will be excluded. June 13th (Miners' Union Day) will be exempt at stations where same is observed as a holiday.

(a) On cars held for loading, time will be computed from the first 7:00 A. M., after placement on public delivery tracks.

(b) On cars held for orders, time will be computed from the first 7 A. M., after the day on which notice of arrival is sent to consignee. On cars held for unloading, time will be computed from the first 7:00 A. M., after placement on public delivery tracks and after the day on which notice of arrival is sent to consignee.

(c) On cars containing freight in bond time will be computed from the first 7:00 a. m. after permit to receive goods is issued to consignee by United States Collector of Customs.

(d) On cars containing freight subject to state inspection time will be computed from the first 7:00 a. m. after inspection by state officials.

(e) On cars to be delivered on any other than public delivery tracks time will be computed from the first 7:00 A. M., after actual or constructive placement on such tracks. See Rule 4 (Notification) and Rules 5 and 6 (Constructive Placement.)

(f) On cars to be delivered on interchange tracks of industrial plants performing their own switching service, time will be computed from the first 7:00 A. M., following actual or constructive placement on such interchange tracks until return thereto. See Rule 4 (Notification) and Rules 5 and 6 (Constructive Placement). Cars returned loaded will not be recorded released until necessary billing instructions are given.

RULE 4.

Notification.

(a) Consignee shall be notified by carrier's agent in writing, or as otherwise agreed to by carrier and consignee, within 24 hours after arrival of cars and billing at destination, such notice to contain point of shipment, car initials and numbers, and the contents, and, if transferred in transit, the initials and number of the original car. In case car is not placed on public delivery track within twenty-four hours after notice of arrival has been sent, a notice of placement shall be given to consignee.

(b) When cars are ordered stopped in transit, the party ordering the cars stopped shall be notified upon arrival of cars at point of stoppage.

(c) Delivery of cars upon private or industrial interchange tracks, or written notice to consignee of readiness to so deliver, will constitute notification thereof to consignee.

RULE 5.

Placing Cars for Unloading.

(a) When delivery of cars consigned or ordered to private or industrial interchange tracks cannot be made, on account of the act or neglect of the consignee, or the inability of the consignee to receive, delivery will be considered to have been made when the cars were tendered. The carrier's agent must give the consignee written notice of all cars he has been unable to deliver because of the condition of the private or interchange tracks or because of other conditions attributable to consignee. This will be considered constructive placement. See Rule 4 (Notification).

(b) When delivery cannot be made on specially designated public delivery tracks, on account of such tracks being fully occupied, or from other cause beyond the control of the carrier, the delivery will be made at the nearest available point accessible to the consignee and the consignee so notified.

RULE 6.

Cars for Loading.

(a) Cars for loading will be considered placed when such cars are actually placed or held on orders of the consignor. In the latter case the agent must give the consignor written notice of all cars which he has been unable to place because of condition of the private track or because of other conditions attributable to the consignor. This will be considered constructive placement.

(b) When empty cars placed for loading on orders are not used, demurrage will be charged from the first 7:00 A. M., after placing or tender until released, with no time allowance.

RULE 7.

Demurrage Charge.

After the expiration of the free time allowed, a charge of \$1 per car per day, or fraction of a day, will be made for first five days; after which a charge of \$2.00 per day shall apply.

RULE 8.

Claims.

No demurrage charges shall be assessed under these rules for detention of cars through causes named below. If, through error, demurrage charges are assessed or collected under such conditions, they shall be promptly cancelled or refunded by the carrier.

Causes.

(a) Weather interference:

1. When the condition of the weather during the prescribed free time is such as to make it impossible to employ men or teams in loading or unloading, or impossible to place freight in cars, or to move it from cars, without serious injury to the freight.

2. When shipments are frozen so as to prevent unloading during the prescribed free time, or when, because of high water or snow-drifts, it is impossible to get to cars for loading or unloading during the prescribed free time.

(b) Bunching:

1. Cars for Loading.—When, by reason of delay or irregularity of the carrier in filling orders, cars are bunched and placed for loading in accumulated numbers in excess of daily orders. The shipper shall be allowed such free time for loading as he would have been entitled to had the cars been placed for loading as ordered.

2. Cars for Unloading or Reconsigning.—When, as a direct result of the act or neglect of carriers, or any cause not attributed to the consignee or consignor, cars destined for one consignee, at one point, and transported via the same route, are bunched in transit and delivered in accumulated numbers in excess of daily shipments, the consignee shall be allowed such free time as he would have been entitled to had the cars been delivered in accordance with the daily shipments.

(c) Demand of overcharge:

When the carrier's agent demands the payment of transportation charges in excess of tariff authority.

(d) Delayed or improper notice by carrier.

Note.—When notice has been given in substantial compliance with the requirements as specified by the rules, the

consignee shall not thereafter have the right to call in question the sufficiency of such notice unless within twenty-four hours after receiving the same he shall serve upon the delivering carrier a full written statement of his objections to the sufficiency of said notice.

(e) Railroad errors or omissions.

RULE 9.

Average Agreement.

When a shipper or receiver enters into the following agreement, the charge for detention to cars, provided for by Rule 7, on all cars held for loading or unloading by such shipper or receiver shall be computed on the basis of the average time of detention to all such cars during each calendar month, such average detention to be computed as follows:

(a) A credit of one day will be allowed for each car released within the first twenty-four hours of free time. A debit of one day will be charged for each twenty-four hours or fraction thereof that a car is detained beyond the first forty-eight hours of free time. In no case shall more than one day's credit be allowed on any one car, and in no case shall more than seven (7) days' credits be applied in cancellation of debits accruing on any one car.

(b) At the end of the calendar month the total number of days credited will be deducted from the total number of days debited, and \$1 per day charged for the remainder. If the credits equal or exceed the debits, no charge will be made for the detention of the cars, and no payment will be made to shippers or receivers, on account of such excess of credits, nor shall the credits in excess of the debits of any one month be considered in computing the average detention for another month.

(a) Credits earned on cars belonging to one class of equipment shall not be used in offsetting debits accruing on cars belonging to a different class of equipment. For the purpose of applying this provision, cars shall be deemed to consist of two classes: (1) Box cars, including refrigerator cars: (2) freight cars of all other descriptions.

(d) A shipper or receiver who elects to take advantage of this average agreement shall not be entitled to cancellation or refund of demurrage charges under Sections (a) and (b) of Rule 8.

(c) A shipper or receiver who elects to take advantage of this average agreement may be required to give sufficient security to the carrier for the payment of balance against him at the end of each month.

Agreement.

To Railroad Company:

In accordance with the terms of Rule 9 of the
Car Service Association, reading as follows:

(Insert Rule 9 in Agreement.)

I (or we), do expressly agree with the above named railroad company that I (or we) will make prompt payment of all car service charges accruing in accordance with such rule during the continuance of this agreement on cars held for loading or unloading by me (or us) on my (or our) account at station of the above named railroad company. This agreement is to take effect 191.... and to continue until terminated by thirty days' written notice to the railroad company.

.....
Approved and accepted by and on behalf of the above named
railroad company by

BY ORDER OF THE BOARD OF
RAILROAD COMMISSIONERS OF
THE STATE OF MONTANA.

Dated Sept. 20th, 1910.

(Signed) R. F. McLAREN, Secretary

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

Supplement to Report and Order Number 39, Dated Sept. 20th, 1910, in the Matter of Adopting the "Uniform Code" of Demurrage Rules and Regulations.

At the request of Mr. R. H. Ingle, Commissioner of the Montana Demurrage Bureau, the date effective of this Commission's Order Number 39, is hereby extended to November 15th, 1910, Mr. Ingle desiring to make the same applicable upon interstate as well as intrastate shipments, and the original date, namely, October 15th, did not allow sufficient time to comply with the rules of the Interstate Commerce Commission.

The Demurrage Bureau is also authorized to use the following language in the publication of its tariff, calculated to eliminate any opportunity for misunderstanding.

RULE 2.

Free Time Allowed.

(a) Forty-eight hours (two days) free time will be allowed for loading or unloading on all commodities, except as provided for in Section D.

(d) Seventy-two hours (three days) free time will be allowed for unloading ore, concentrates, lumber, stulls, lagging, coal, coke, lime and lime rock.

RULE 3.

Computing Time.

Note.—In computing time Sundays and legal holidays (National, State and Municipal) also June 13th, where observed as a holiday, will be excluded; when a legal holiday falls on Sunday, the following Monday will be excluded.

RULE 9.

Average Agreement.

When a shipper or receiver enters into the following agreement, the charge for detention on all cars held for loading or unloading by such shipper or receiver, shall be computed on the basis of the average time of detention to all such cars during each calendar month, such average detention to be

computed as follows: (Balance of Rule 9 same as Report and Order Number 39.)

THE BOARD OF RAILROAD COM-
MISSIONERS OF THE STATE
OF MONTANA.

Dated Oct. 14th, 1910.

(Signed) R. F. McLAREN, Secretary.

PART V.

BEFORE THE RAILROAD COMMISSION OF MONTANA.

Coal Mine Operators in Bearcreek Field,

vs.

Montana, Wyoming & Southern Railroad.

**In the Matter of Alleged Insufficient Freight Service and
Insufficient Car Supply on the Line of the
Defendant Carrier.**

Hearing, January 31st, 1910. Decided, March 22nd, 1910.

REPORT AND ORDER OF THE COMMISSION.**Number 33.**

The defendant company operates a line of railroad extending from the Bearcreek coal fields in Carbon County, Montana, to Bridger, Montana, approximately 22 miles, where it connects with a branch of the Northern Pacific. Its principal traffic consists of coal, the product of complainants' mines, which mines are served only by the said M. W. & S. R. R.

Section 19, Chapter 37, Laws of 1907, makes it the duty of this Board to compel any and all railroads to provide, maintain and operate sufficient train service both freight and passenger, for the proper and reasonable accommodation of the public, and it is claimed that by reason of the failure or neglect of the defendant to furnish sufficient transportation, complainants are unable to place their product upon the various markets of the state, and as a result there exists a serious shortage of fuel and in many localities industries are threatened with a shut down.

A public hearing was held at Bridger, Montana, January 31st, 1910;

REPRESENTED:

Montana, Wyoming & Southern

Railroad,	By Geo. W. Pierson,
	Counsel.

Coal Mine Operators	" O. F. Goddard,
	Counsel.

Commissioners,

E. A. Morley,
B. T. Stanton,
D. Boyle.

The testimony taken at this hearing showed that the five coal mines comprising the Bearcreek group, were prepared to load 50 to 60 cars per day, and that this figure would be increased to 75 or more by employing additional miners, if the operators had the assurance that the railroad company would provide sufficient cars and transportation to the junction point with the Northern Pacific—Bridger, but owing to the failure of the Montana, Wyoming & Southern to supply enough empty cars for loading, the mines produced considerably less than half their capacity from December 1st, 1909, to January 21st, 1910.

The said Montana, Wyoming & Southern at that time had no cars of its own which were suitable to deliver to its connection, the Northern Pacific, neither was there any contract or other arrangement with the latter whereby cars should be furnished, and the Northern Pacific not being bound or responsible in any way, delivered empty equipment to the M. W. & S. for coal loading, intermittently, and in such numbers as were then available. In other words the defendant in this complaint was entirely at the mercy of the Northern Pacific in the matter of equipment.

It has been shown that the empty cars delivered by the Northern Pacific at Bridger to the Montana, Wyoming & Southern were not taken out of the yard promptly, for one cause or another, and that on account of such failure, the Northern Pacific company did not make any special effort to fill the standing order of 40 cars per day, but testified that had the Montana, Wyoming & Southern taken the empties out of Bridger as fast as they were delivered, they (the Northern Pacific), were in a position to bring in a greater number each day, barring accidents, but took the view that "what's the use of supplying more if they don't use what they've got."

The Montana, Wyoming & Southern Railroad Company owns three engines, two of which had been out of service for some time on account of being disabled, while the third, an engine of small capacity, was unable to do much work on the heavy grades. They had, however, a small engine leased from the Northern Pacific, but the testimony shows that the engines in service were insufficient, either owing to their condition or their tractive power, particularly during the severe weather, to handle the number of cars required by the mines

even if such cars had been delivered by the Northern Pacific. It is true that at times during this period the operation of the M. W. & S., was considerably hampered by snow, but this would not have amounted to much if they had any appliances such as plows or flangers with which to clear the rails. Nothing of this sort, however, is owned or available for their use.

Shortly before the date of this hearing, the defendant company engaged from the Northern Pacific, engine No. 115, known as "Class S 2," which being much larger, was able, together with the smaller engines to fully supply the needs of the mines; also about this same time the Northern Pacific found it possible to deliver empty cars in greater number than during the past six weeks and the result was that the conditions complained of by the mine operators had been remedied, the average loading, January 21st to 29th, being $47\frac{1}{2}$ cars per day..

M. W. Maguire, General Manager of the said Montana, Wyoming & Southern testified that his company had purchased fifty new box cars, all of which had been forwarded from St. Louis and were expected to arrive at any time. He also stated that their own largest engine, which had been out of service for several weeks, on account of accident, would be ready to come out of the shop in less than a week.

It does not appear to this Commission that the defendant company made any special effort to cope with the situation either in the matter of obtaining sufficient power or sufficient cars from the Northern Pacific, until after the matter was taken in hand by the Board on January 13th, 1910, on which date the M. W. & S., increased its order for cars to fifty per day. For instance, the Chicago, Milwaukee & Puget Sound Railway desired to obtain a portion of their coal supply from the Bearcreek field, and placed an order with one of the mines for 1,000 tons per day. The Northern Pacific declined to furnish cars for this loading (destined off its own line), but the Montana, Wyoming & Southern did not make any effort to obtain C. M. & P. S. cars for this business, which would probably have been furnished, as the C. M. & P. S. company wanted the coal.

Summing up the testimony, the Commission is convinced that the defendant is responsible for the conditions which existed by reason of its failure to equip its railroad with the

necessary appliances, power and rolling stock to operate the same in a manner which would afford reasonable service to its patrons in accordance with its charter; such failure reverting in the loss of revenue to the road itself, as well as to its patrons who are largely the complainants in this case.

THEREFORE, in accordance with the provisions of said charter, that the defendant as a common carrier, will maintain **and operate** a line of railroad, and in accordance with Section 19, Chapter 37, Laws of 1907, as quoted above, it is hereby ordered and directed that the said Montana, Wyoming & Southern Railroad Company shall from the date hereof, so equip its line of railroad by purchase, lease or otherwise, with the facilities necessary to render reasonable service to the public, such reasonable service to be understood as taking care of all shipments offered for transportation in addition to providing the coal mines in the Bearcreek field with a sufficient number of cars for loading at all times, according to the orders placed by the mine operators, as well as reasonably prompt service in the matter of switching out the loads from the mine tracks.

The Commission does not see wherein this is imposing any hardship upon the defendant, or in fact requires it to perform any service other than that which it has agreed to do by the terms of its charter, and the secretary is directed to serve upon the Montana, Wyoming & Southern Railroad Company, a certified copy of this report and order.

BY ORDER OF THE BOARD OF
RAILROAD COMMISSIONERS OF
THE STATE OF MONTANA.

Dated March 22nd, 1910.

(Signed) R. F. McLAREN, Secretary.

BEFORE THE RAILROAD COMMISSION OF MONTANA.

The Washoe Copper Co. (Coal Dept.),
Montana Coal & Iron Company,
Bearcreek Coal Company,
Smokeless & Sootless Coal Company,
International Coal Company,

vs.

Montana, Wyoming & Southern Railroad Co.

**In the Matter of "Grain Doors" for Use on Box and Stock
Cars in Coal Service.**

Hearing March 31st, 1910. Decided April 20th, 1910.

REPORT AND ORDER OF THE COMMISSION.

Number 35.

Complainants seek reparation for the value of lumber which they have supplied for "grain door" purposes at their respective coal mines, and also petition that the defendant be required to supply material for this purpose in future, or allow complainants credit for same.

Answer of the defendant avers that this Commission "is without authority to make any order concerning the furnishing of material, or equipment of freight cars for the convenience of patrons of the railroad." Second, "that complainants did not furnish any material or repairs for cars **owned** by the answering defendant, and in fact if any material was furnished by complainants, it was for cars owned by the Northern Pacific Railway Company, and said material or any part thereof was not furnished on the order or request of the answering defendant, and is therefore in no manner responsible." Third, that the Commission has no jurisdiction to order payment of a claim for money alleged to be due for material furnished.

REPRESENTED:

Washoe Copper Co.	By Thos. Good.
Montana Coal & Iron Co.	" W. W. Worthington.
Bearcreek Coal Co.	" H. S. Hopka.
Smokeless & Sootless Coal Co.	" James F. Brophy.
International Coal Co.	" H. R. Rozetta.
Montana, Wyoming & Southern R. R. Co.	" Geo. W. Pierson, Counsel.
	" M. W. Haguire, Genl. Mgr.

Commissioners, Stanton and Boyle.

The defendant owns and operates a line of railroad, approximately twenty-two miles in length, from the Bearcreek coal fields to Bridger, Montana, where it connects with the Northern Pacific. It is true that none of the cars involved in this complaint were owned by defendant, having been delivered to the M. W. & S. at Bridger by the Northern Pacific; these are not necessarily N. P. cars, but very often the equipment belongs to some foreign line, and on which the M. W. & S. pays the established per diem rental.

The testimony shows that in order to properly and safely load box and stock cars with coal, it is necessary to place therein temporary inside doors, commonly referred to as "grain doors," usually constructed of low grade lumber or slabs; that the plaintiffs have, since the road was built about three years ago, furnished the necessary material for this purpose owing to the neglect or refusal of the carrier to do so.

The Commission holds that it has no jurisdiction over that portion of the complaint which seeks to recover monies alleged to be due from the defendant, and that the complainants can only look for redress for said alleged indebtedness through an action in the court. The Commission holds, however, that it has jurisdiction to make an order requiring the defendant to furnish cars suitably equipped for the loading for which they are ordered regardless of whether the defendant owns, leases or hires the use of such cars. Case of Rice vs. Western New York & Pennsylvania Ry. Co., 4 I. C. C. 149 in which the Interstate Commerce Commission lays down the identical principle:

"It is not the business of a shipper to furnish the vehicle of transportation. That is the duty of the carrier. Under its franchise the carrier must do more than construct his roadway. He must equip it with the means of transportation and these means, of whatever style or pattern, must be open impartially to all shippers of like traffic. If the carrier hires or arranges in any manner for the use of vehicles he does not own, he has one of two things to do; he must furnish like vehicles to all competitors in such traffic, or to

give no undue preference in rates. For all transportation purposes, so far as the public is concerned, a carrier makes every vehicle his own that he uses upon his road, no matter how acquired. His responsibility to the public is the same in respect to rates and other transportation duties whether he owns or hires his vehicles. * * * * The duty to furnish impartial transportation cannot be evaded on any pretext. It is fundamental and imperative."

Sec. 4373. Revised Codes of Montana reads in part:

"The provisions of this act shall apply to the transportation of passengers and property between points within this state, and to the receiving, storing and handling of such property, and to all charges connected therewith, and shall apply to railroad companies, express companies, car companies, etc. The term 'transportation' shall include **all instrumentalities of shipment or carriage.**"

It is found on investigation that the majority of railroads, if indeed not all, operating in this state have of their own volition agreed with the shippers to provide grain doors, or the lumber to manufacture same, for all bulk loading such as requires this protection, and in the event that the shipper supplies said material owing to the failure of the carrier, credit is allowed for the value thereof, the amount of such credit varying somewhat in different localities.

IT IS THEREFORE AND HEREBY ORDERED that on and after the first day of June, 1910, the said Montana, Wyoming & Southern Railroad Company shall furnish cars for the loading of coal at the various mines located on its line of railroad, suitably equipped for such purpose, this to be understood as including grain doors or the material required, and in the event that the shipper, after having notified the Montana, Wyoming & Southern in writing of his requirements in this respect, is obliged to furnish the material himself, he shall be given credit for the actual value of same, but not to exceed two dollars (\$2.00) per car.

The secretary is directed to serve upon the said Montana, Wyoming & Southern Railroad a true and certified copy of this report and order.

THE BOARD OF RAILROAD COM-
MISSIONERS OF THE STATE
OF MONTANA.

Dated April 20th, 1910.

(Signed) R. F. McLAREN, Secretary.

BEFORE THE RAILROAD COMMISSION OF MONTANA**In the Matter of Docks and Wharves on the Flathead Lake.**

Hearings March 23rd and June 28th, 1910. Decided July 14th, 1910.

REPORT AND ORDER OF THE COMMISSION.**Number 37.**

Section 5, Chapter 38, Laws of 1909, provides: "The Railway Commission of this State shall have jurisdiction over all docks and wharves within the state and have full power to regulate, determine and fix all dockage and wharfage fees."

The only navigable body of water in this state, or at least on which navigation is being conducted at the present time, is the Flathead Lake, situated in Flathead county, extending south from Somers to Polson, a distance of approximately thirty-five miles, docks being located at Somers, Rollins, Dayton and Polson. The most important of these being the one at Somers, owned by the Great Northern Railway Company.

Section 2, Chapter 38, reads: "That all docks and wharves built on any of the navigable waters of the State shall be public docks and wharves, and all boats, vessels and steamboats plying such navigable waters shall have a right to land thereat and take on and discharge its or their cargoes and passengers thereon. Provided, however, the owner of such dock or wharf shall have the right to charge and collect from the owner or owners of such boat, steamboat or vessel, a reasonable compensation therefor."

J. H. Stevens, County Attorney, Flathead county, called on the Commission March 1st, 1910, and explained at considerable length the dock and wharf situation on the lake and suggested that in order to have a better understanding of the difficulties experienced last season, and to adopt means for betterment, a public hearing be held. This was done March 23rd, at Kalispell, being conveniently situated for all interested parties.

Briefly summing up the testimony of witnesses at this hearing, it may be said that the greatest difficulty was the lack

of dockage facilities. The docks were not large enough to accommodate the number of boats plying the lake. Witnesses urged the desirability of inspection and of life saving equipment, particularly on boats carrying passengers. The latter, however, does not come within the power of this Commission, the law providing that it shall have jurisdiction over **docks and wharves**; neither have we authority to order additional docks built or the present ones enlarged. In other words, the Commission cannot compel anyone to build docks for public use.

Since the opening of navigation this season, the Great Northern Railway Company has constructed a small dock in connection with their freight warehouse at Somers, and extending the warehouse track so as to hold three cars where same can be unloaded convenient to the boats.

The Railway Company formulated a set of rules and regulations to govern its use, also a schedule of dockage charges and submitted same to the Commission for its approval, but on account of certain regulations contained therein over which we did not have authority, and the uncertainty of the application of certain other rules and regulations, the Commission could not unqualifiedly affix its authorization.

Further complaints were made and after an inspection by the Commission on June 27th, a public hearing was held at Kalispell on the 28th.

REPRESENTED

Great Northern Railway. Co.	By W. H. Noffsinger, Counsel. J. T. McGaughey, A. G. F. & P. A. Walter Stevens, Agent at Somers. S. T. Moore, Agent at Kalispell.
Hodge Navigation Co.	By B. H. Dennison.
"Eva B" Passenger Boat	" H. S. Millbank.
Northwestern Transportation Co.	" Geo. Fessenden, Genl. Mgr.
Flathead Lake Transportation Co.....	" E. S. Dickey, Dr. Morrow, President.
Commissioners, Stanton and Boyle.	

As at the former hearing in March, the insufficiency of landing space resulting in congested conditions, appeared to be the most difficult problem to solve. The new dock is only of sufficient length to accommodate one of the larger boats, the Montana or Klondike for instance, there being but one "slip" and when this slip is in use the other boats are unable to get in and must tie to the boat arriving first, loading or unloading their passengers over or across the bow or deck of

the vessel at the dock. Witnesses complained that in view of these meager accommodations and the fact that no service was rendered to the boat companies other than the mere privilege of landing, they were unable to see wherein the dock owners were justified in assessing their proposed schedule of rates. At the same time they were perfectly willing and would be glad to pay for first class dockage facilities.

Dredging—Representative of the Great Northern testified that an appropriation of \$1,200 per annum was necessary for dredging purposes. It would appear from the testimony that all boats, with the exception of one or two of the larger size, could use the channel without dredging, and as this Commission looks at it, it is not for these smaller craft to maintain a channel for the one or two drawing a greater amount of water. The latter should protect themselves, and if dredging is required the company owning or operating such boats must stand the expense.

Delivery—The Railway Company's warehouse at Somers is located at the shore end of the dock. Through this warehouse local business for Somers proper is handled, and delivery made to consignee the same as from any other freight house. The proposed rules and regulations, however, provide that when shipments are delivered to the boats through this warehouse an additional charge would be made. The Commission knows of no reason why a delivery charge should be made to a boat company any more than it would be proper to exact a similar fee from the consignee who backs his wagon up to the freight-house door.

Routing—The boat companies took exception to the proposed action of the dock owners to deliver freight to the first boat out regardless of its routing. On account of the limited space, it was contended that the dock would be blocked if freight were held for the particular boat to which it was consigned, but the testimony shows that there has not been, nor is there any probability that the boats making regular daily trips will be unable to clean up all business consigned to them. As a matter of fact, the Railway Company has been unable, as a general thing, owing to lack of station force, to make prompt delivery to the boats, and the latter were compelled to run light, while the freight stood in cars at Somers.

The Commission believes that routing instructions should

be strictly observed, just as much as though it were a train of stock routed via one of the St. Paul-Chicago lines. The boat companies have solicited and secured this business in the same manner as traveling freight agents representing the various railway companies.

The law, as quoted above, provides that the owner of such dock or wharf shall have the right to make a reasonable charge; and to determine what a reasonable charge shall be, we find that the Great Northern Railway Company, according to its testimony, has invested in this property eight thousand dollars. The open season for navigation on the Flathead Lake is not less than seven months, some boats operating eight, possibly nine, months out of the year. There are at the present time, according to our best information, in revenue service, sixteen large and small boats and several barges using the dock at Somers.

The interchange of traffic between the railroad company and the lake transportation companies is, of course, of mutual advantage to each carrier by virtue of the fact that owing to the operation of the boat lines much traffic originates at lake points which is delivered to the railroad company for transportation to destination. In view of the revenue to the railroad company thus obtained, and having taken into consideration the investment of eight thousand dollars as hereinbefore mentioned, it is the opinion of the Commission that the following schedule of charges is just and reasonable, and will accrue in fair compensation to the owners of said dock; therefore,

IT IS HEREBY ORDERED, in pursuance of Section 5, Chapter 38, Laws of 1909, as hereinbefore quoted, that the following schedule of dockage charges shall govern as a maximum, the use of the dock at Somers, retroactive to July 1st, 1910, and shall so remain in effect until the further order or approval of this Commission. The secretary is directed to serve upon the Great Northern Railway Company a true and certified copy of this report and order.

		Per Month
New Klondike	100 tons or over	\$25.00
Big Fork	} 25 to 40 tons	17.50
City of Kalispell		17.50
Montana		17.50
Eva B	} 10 to 15 tons	10.00
City of Polson		10.00
Swan		10.00
Doman	} Less than 10 tons	5.00
Mary S		5.00
Dolphin		5.00
Bonita		5.00
Tug Boats		5.00
Barges	} Not over 30 tons	7.50
Barges		10.00
Barges		12.50

Any and all boats which are now or may hereafter enter into revenue service, and which are not herein specified, shall pay the same dockage rental as provided for boats of equal rating.

BY ORDER OF THE BOARD OF
RAILROAD COMMISSIONERS OF
THE STATE OF MONTANA.

Dated July 14th, 1910.

(Signed) R. F. McLAREN, Secretary.

Subject: Claim for Stock Killed.

C. E. Brown,

vs.

Great Northern Railway Co.

C. E. Brown, of Jefferson City, Montana, complained on September 11th, 1909, that the Great Northern Railway Company had killed some of his stock near Wickes, Montana, on or about June 20th, and that he had been unable to obtain settlement.

The Commission does not claim jurisdiction in such cases, but assembled the facts in the case and presented same to the railway company. Complainant advises under date of December 3rd, that a very satisfactory adjustment has been made.

Subject: Coal Delayed in Transit.

Helena Fuel Company,

vs.

Northern Pacific Railway Co.

The Helena Fuel Company applied to the Commission on December 13th, 1909, for assistance in locating and expediting the movement of several cars of coal in transit from Bearcreek, destined to various points, which were urgently needed. Complaint states: "We are unable to learn anything from the local agent here or Mr. C. L. Nichols, General Supt. at Livingston, to whom we have written."

Matter was taken up by wire and the last of these cars reached destination December 16th, or three days after complaint was presented.

Subject: Demurrage.

The A. W. Miles Company,

vs.

Northern Pacific Railway Co.

The demurrage rules in Montana provide seventy-two hours free time for the unloading of lumber, lagging, stulls, coal, coke, lime, lime rock and bulk precipitates.

Complainants were allowed but 48 hours free time to unload a car of lath, and took the position that the seventy-two hours should apply the same as on a car of lumber. The Commission agreed that inasmuch as a car of lumber and lath mixed would take the same rate there was no reason why the 72 hours free time should not apply. A conference was had with Mr. R. H. Ingle, Commissioner of the Montana Demurrage Bureau, at which time it was decided that "lumber" as referred to in these rules should include any and all forest products taking the lumber freight rate. Accordingly an amendment was made and the overcharge on this particular car refunded.

Subject: Claim for Damage to Stock.

Thos. Flynn,

vs.

Oregon Short Line Railroad Co.

The above named presented complaint and claim to the Commission, stating that on January 19th, 1910, he loaded at Dillon three cars of fat cattle for the Portland market, and that by reason of delays enroute and the inability of the party in charge to obtain correct information from the trainmen and dispatchers as to when they were to load and unload, occasioned complainant serious inconvenience and deterioration to his stock, which was a long time on the road. He estimates that he is damaged to the extent of \$800 and asks the Commission to take the matter up.

Reply was made to complainant stating that we were unable to take any action, as the Commission has no jurisdiction over claims for damages, and suggested that he consult with his attorney.

Subject: Claim for Loss Account of Missing Train.

Dr. A. M. Macaulay,

vs.

Great Northern Railway Co.

Complainant states that on October 13th, 1909, he missed the train at Belt, Montana, for Great Falls, due to the agent at the former station informing him that the train would arrive at 2:40 a. m., whereas said train passed Belt at 2:10 a. m., and the doctor was obliged to drive to Great Falls, a distance of twenty-two miles, entailing expense for which he seeks reparation.

We learn from the legal department of the railway company under date of January 4th, that the amount claimed had been recommended paid, but this Commission has, of course, no jurisdiction over claims for damages.

Subject: Switching Service at Butte.

Montana Provision Company,

vs.

Northern Pacific Railway, and Chicago, Milwaukee & Puget Sound Ry.

The above named complainants reported to the Commission on February 3rd that they were unable to have prompt switching done on their cars arriving in Butte via Northern Pacific or the Chicago, Milwaukee & Puget Sound railways, stating that some cars have been held as long as four days on the transfer track before being placed on team track or set to warehouse.

Matter was immediately taken up with the railroad companies involved, and under date of February 12th complainants report that there has been a decided improvement in the service and cause for complaint has been removed.

Subject: Private Road Crossings.

Frederick Root,

vs.

Chicago, Milwaukee & Puget Sound Railway Company.

The above named resides at Grace, Montana, and on August 14th, 1909, made complaint to the Commission that during the construction of the Chicago, Milwaukee & Puget Sound Railway through his place, the said railway company agreed to furnish him with two private crossings in consideration of closing others and also for the privilege of putting a steam shovel on complainant's ground to obtain material for grading, but promises had not been fulfilled and Mr. Root stated that he was unable to obtain any satisfactory information as to what the company intended to do

Considerable correspondence has passed between the railway company and the Commission, from which it developed that Mr. Root also had some claims for stock killed on account of cattle guards not having been put in place, and under date of February 11th, 1910, complainant advises that he has accepted \$250 from the Chicago, Milwaukee & Puget Sound Railway Company and signed a release in full settlement of all claims up to that time.

Subject: Road Crossings.

J. F. Saville,

vs.

Chicago, Milwaukee & Puget Sound Ry. Co.

Complaint was made to the Commission stating that the railway company had fenced its right of way in such a manner as to shut off access to the range, and complainant desired that an underground crossing be put in so that his stock might go back and forth without crossing the railroad tracks.

Complaint of this kind not being within the jurisdiction of the Commission, Mr. Saville was requested to take the matter up with the railway company direct.

Subject: Stock Killed.

F. E. Bockman,

vs.

Great Northern Railway Co.

Complaint states that in March, 1909, the defendant company killed one horse and badly crippled another near Libby, Montana, and that he had been unable to secure settlement.

This claim being for damages, alleged to have been sustained, it is not within the jurisdiction of the Commission and Mr. Bockman was so informed.

Subject: Switching at Huntley.

The Huntley Commercial Club, and C. H. Chase Lumber Co.,
vs.

Northern Pacific Railway Company.

The above named complainants reported to the Commission that they were obliged to pay a switching charge of \$6.00 per car on cars received from the Chicago, Burlington & Quincy Railroad at Huntley destined to a Northern Pacific track, also at Huntley, and claimed that the rate assessed was excessive for the service rendered.

It should be understood that the cars in question came into Huntley over the line of the Chicago, Burlington & Quincy Railroad, and placed on interchange track from which they were switched to the industry spur by the Northern Pacific Railway, the said Northern Pacific performing no other service and obtaining no other revenue than the switching charge on this business. The rate complained of is standard and regularly authorized by published tariff applying not only at Huntley but at all other points in the state under like conditions.

No explanation was offered by the complainants to support their assertions that the charge was unreasonable, in which this Commission could not agree, as the switching company could, for the same cost, move a car half a mile or more, as for a few hundred feet, and in fact the charge of \$6.00 per car was authorized by this Board after the matter had been very carefully considered. This was fully explained to complainants, at the same time suggesting that there might possibly be reasons why the charge was not a just one at that particular station and inviting a formal complaint. This however, has not been presented, and our latest communications addressed to the petitioners are unanswered. Therefore, we take it that no further action is desired.

Subject: Right of Way Fence.

Charles H. Pearson,

vs.

Great Northern Railway Co.

D. W. Doyle, an attorney at law of Conrad, Montana, on behalf of Chas. H. Pearson, also of Conrad, presented complaint to the Commission stating that the Great Northern Railway Company had failed to fence its right of way in certain localities in the vicinity of Conrad and through the ranch of Mr. Pearson; that the latter had sustained loss of stock for which he had been unable to secure from the railway company a fair market price, and requested the Commission to take the matter up for the purpose of having the railway company fence its right of way.

Section 4308 of the Revised Codes of Montana requires railroad corporations to make and maintain a legal fence on both sides of their right of way, and also maintain cattle guards at crossings. **In case this is not done and stock is thereby killed or maimed, the railway company must pay** to the owner thereof, a fair market price for the same, unless it occurred through the neglect or fault of the owner.

Complainant was advised that this Commission did not have jurisdiction over claims for damages, nor could we **compel** the railway company to fence its right of way under Section 4308 as above, which is the only legislation on the subject in this state.

Subject: Switching Cars at Glendive.

Hanley & Gracey,

vs.

Northern Pacific Railway Co.

The above named engaged in the plumbing and heating business, Glendive, Montana, made complaint to the Commission on April 8th, 1910, stating that they were experiencing considerable difficulty in having cars switched onto team track at Glendive where same would be accessible to unload, and cited one particular instance where a shipment from Beach, N. D., had remained in the Glendive yards for eight days, and they were still unable to get it.

On taking the matter up with the railway company, it was found that, owing to the influx of settlers, Glendive and in fact many other yards were temporarily overtaxed, hence some delay in placing cars for unloading, but that on April 21st the situation was well in hand and no delays were being experienced so far as known.

Subject: Error in Routing.

George H. Town,

vs.

Chicago, Burlington & Quincy Railroad Co., Northern Pacific Railway Co., and Yellowstone Park Railroad Co.

On September 17th, 1909, complainant shipped a car of slabs from Prior, Montana, destined to Washoe, Montana, routed via the Chicago, Burlington & Quincy Railroad, the Northern Pacific Railway, and the Yellowstone Park Railroad. Through error this car reached Red Lodge, a point on the Northern Pacific, and after sixty days, during which time effort was being made to obtain disposition, the car was unloaded. Finally the slabs were reloaded into another car and forwarded to proper destination, Washoe, with demurrage covering the sixty day period following as advance charges.

The consignee declined to pay complainant for the value of the slabs until the question of demurrage outstanding against the car was settled, and on March 15th, 1910, Mr. Town took the matter up with the Commission. An investigation was made and learned that the fault rested with the Burlington Company. The matter was adjusted and on May 24th complainant advises that he has received voucher in full settlement of his claim.

Subject: Blocking Crossings.

Toston, Citizens of,

vs.

Northern Pacific Railway Co.

Complaint was made to the Commission on May 5th, 1910, stating that the Northern Pacific local freight trains were blocking the public highway at that station for an unreasonable length of time daily, while the local freight was being loaded and unloaded. Matter was at once taken up with Supt. Brown, who took action immediately, and we are advised by complainants under date of June 4th that the trouble has been entirely overcome.

Subject: Hay Shipments.

Beebe Grain Company,

vs.

Oregon Short Line Railroad Co.

Complaint stated that a 36-foot car had been ordered to transport a quantity of hay from Glenn station to Butte, Montana, the former being a non-agency point. A 33-foot car was furnished instead, which would not contain the quantity of hay desired to ship, and complainant asked that the defendant be required to apply carload rate on the follow lot of 66 bales. Furthermore, it was claimed that the car furnished was loaded to its full visible capacity, but fell short of the established minimum for a car of that dimension 3,345 pounds.

The Commission was obliged to inform complainant that under the authorized rules and minimums in effect on the Oregon Short Line, carload rate could not be applied on the follow lot nor could an exception be made to the established minimum for a car 33 feet in length. It not infrequently happens that a car is loaded to its full visible capacity with baled hay, but when put on the scales falls short of the required minimum, due, in many instances, to improper loading or baling. There is some variation, of course, in the weight of the same size bales in different sections of the state, but ordinarily the authorized minimum is fair and equal to both shipper and carrier company.

The legal aspect of this case is that the shipper was not obliged to load this 33-foot car. He could have refused it, but having accepted and loaded the car, he must abide by the rules governing.

Subject: Demurrage.

Schuler Brothers,

vs.

Oregon Short Line Railroad Company.

Complainants are ranchers residing in the vicinity of Bond station on the Oregon Short Line. Their complaint relates that on December 14th, 1909, they ordered two cars set in at Bond, for loading with hay, and on the 15th M. L. & T. car 33538 was found on the siding at Bond, and they supposed that it had been placed on their order, loaded it and billed it out Friday, December 17th, for South Butte. Upon arrival at destination consignee was obliged to pay \$9.00 demurrage. Shippers were unable to explain this, and referred the matter to the Commission.

It developed that this car had been set in at Bond several days prior on another order, and for some reason had not been loaded, hence the error in assessing demurrage against Schuler Brothers. It was arranged to make refund on surrender of the original receipted expense bill.

Subject: Road Crossing.

C. E. Anderson,

vs.

Northern Pacific Railway Co.

Complaint made to the Commission April 11th, 1910, stated that request had been made upon the Northern Pacific Railway Company for road crossing over and across their right of way four miles west of Terry, Montana, but had been unable to get any satisfaction, and no reply had been made to three letters written at various times.

Section 4318 provides that "Any railroad operating in this state which may hereafter fence their right of way, shall make crossings through their fence and over their roadbed, along their right of way every four miles thereof, or as near thereat as may be practicable."

Investigation showed that the location where this crossing was desired was at the end of a deep cut, and therefore was considered dangerous. General Supt. Nichols of the Northern Pacific, however, stated that there were no operating objections to this crossing being so placed, and if the applicant was satisfied he would have the crossing put in. This was done, the work being completed about July 15th, 1910.

Subject: Public Road Crossing.

J. R. Larimer,

vs.

Northern Pacific Railway Company.

The above named complainant, road supervisor of District No. 23, Yellowstone County, informed the Commission that the defendant had failed to provide a crossing on the public highway running north and south, same being the first public road crossing east of Worden, Montana, and that on account of such failure the people residing on the north side of the track were compelled to travel one-half mile east to an open crossing, and then return on the south side of the track to public highway, involving one mile additional travel.

The Commission does not know what controversy Supervisor Larimer may have had with the railway company, but when we took the matter up the necessary work was promptly done, and the crossing in question put in first class condition.

Subject: Delay to Coal in Transit.

M. G. Wright,

vs.

Chicago, Milwaukee & Puget Sound Railway Company.

The above named, representing several steam plow outfits operating in the vicinity of Straw, Montana, on the Lewistown branch of the Chicago, Milwaukee & Puget Sound Railway, complained that coal in transit for use of steam plow outfits was being seriously delayed, much to their inconvenience and expense.

The matter was taken up with the railway company and it was learned that there had been some congestion of dead freight on account of the heavy stock movement, but that this condition had been remedied, and the delayed business had practically all been cleaned up. We have received no further complaint and understand that conditions are now satisfactory.

Subject: Hinsdale Stock Yards.

L. E. Kaufman,

vs.

Great Northern Railway Co.

Complaint was made on July 15th, 1910, alleging that the stock yards of the Great Northern Railway Company at Hinsdale, Montana, were not in a suitable and safe condition for the expeditious loading of live stock, and recommending that certain changes and improvements be made.

The railway company suggested that a representative of the complainant meet a representative of the railway company at Hinsdale and go over the matter together. This was done, accompanied by a representative of this Commission, and the alterations and improvements asked for were made, thus placing these yards in much better condition than before.

Subject: Alleged Discrimination at Alhambra, Montana.

D. I. Ames,

vs.

Great Northern Railway Co.

The above named complainant, president of the Sunnyside Hot Springs Hotel, at Alhambra, made complaint against the Great Northern Railway Company, alleging discrimination in favor of complainant's competitor, in that the latter had been permitted to construct a sidewalk across the railway company's right of way, thereby preventing this complainant from reaching the station platform with his bus. Further, that the railway company had denied complainant the privilege of driving his conveyance on the right of way which was necessary in order to reach the platform where passengers and baggage were unloaded.

The answer of the defendant in this case grants complainant the privilege of driving his passenger bus to the east end of the platform, and satisfied that portion of the complaint.

Petition also requests that the railway company be required to build a suitable depot for the accommodation of passengers waiting for trains. The Commission's investigation developed the fact that this request was not warranted, inasmuch as the hotel at Alhambra is within a stone's throw of the point where trains stop, and passengers awaiting trains could just as well remain at the hotel until the train arrived. Furthermore, the railway company maintains an agency, both freight and passenger, at Clancy, which is less than one mile distant from Alhambra.

DANGEROUS CONDITIONS.

A number of verbal complaints were made relative to the location of the sand-house at Cut Bank, Montana, on the main line of the Great Northern Railway, it being claimed that there was insufficient clearance between this structure and the nearest rail, and that by reason of such insufficient clearance serious accidents had resulted therefrom in the past.

An investigation showed that the condition was a dangerous one. A man standing on the steps of an engine would be liable to injury at that point where the clearance was only about ten inches. The matter was taken up with the railway company, as under Section 8523 it makes it a misdemeanor to allow dangerous conditions to exist, and Inspector Ross reports under date of August 7th that the clearance has been increased to 36 inches by removing a portion of this building, and that the danger which heretofore existed has been eliminated.

RAILROAD CONSTRUCTION.

The mileage of new railroad built in Montana since November 30th, 1909, does not signify any material increase over the total mileage of the state a year ago.

The Chicago, Milwaukee & Puget Sound Railway Company has acquired by purchase the Gallatin Valley Electric Railway, extending from Bozeman to Salesville via Bozeman Hot Springs, a distance of eighteen miles. This line was constructed in 1909, being opened for traffic for the first time in September of that year.

Since the purchase by the C., M. & P. S., that company has extended the line from Bozeman Hot Springs to Three Forks, a distance of approximately twenty-five miles, where it connects with the main line of the Milwaukee and provides a "feeder" from the famous Gallatin Valley. This extension is not electric, but is operated by steam power. A connection has also been built into Belgrade, where it joins the main line of the Northern Pacific Railway. It is probably the intention to continue the Belgrade connection almost due north and connect with the main line of the C., M. & P. S. Ry. at Maudlow.

Leaving the main line of the Chicago, Milwaukee & Puget Sound Railway at Leader, Montana, a branch line known as the White Sulphur Springs & Yellowstone Park Railway is being built to White Sulphur Springs, following the south fork of the Smith River the greater portion of the distance. It is not unlikely that this branch will in time be extended through to Great Falls via the Smith River route. It is also possible that the Milwaukee will build a line from Melstone, Montana, into Great Falls through Fergus and Cascade counties and connecting with their present line, formerly the Montana Railroad, at Lewistown.

The Great Northern Railway Company has completed its line from Bainville to Plentywood, Montana, all in Valley county, but advises the Commission that same will not be open for operation until 1911. (See page 262 of our 1909 Annual Report.)

The Chicago, Burlington & Quincy Railroad has under construction a line from a point near Scribner, Montana, to a point

in the vicinity of Fromberg, Montana, where it will connect with the Clark's Fork branch of the Northern Pacific Railway. (For particulars see Commission's Report and Order No. 34.)

The Shields River branch of the Northern Pacific, referred to on Page 263 of our 1909 annual report, has been completed and is now in operation.

The new line of the Northern Pacific Railway from Glendive following the Yellowstone river, properly known as the Missouri River Railway, mention of which was made on page 264, report for 1909, is still under construction. Grading has been completed and the piers and abutments for the bridge over the Yellowstone river are well under way.

RAILROAD EMPLOYEES' HOURS OF SERVICE LAW.

The hours of service of railway employes as provided by law, are contained in the following sections of the Revised Codes of Montana:

"1741.—Railway Employes. Hours of Labor.—On all lines of steam railroads or railways operated in whole or in part, within this State the time of labor of locomotive engineers, locomotive firemen, conductors, trainmen, operators and agents acting as operators, employed in running or operating the locomotive engines or trains on or over such railroads or railways in this State, shall not at any time exceed sixteen (16) consecutive hours or to be on duty for more than sixteen (16) hours in the aggregate in any twenty-four (24) hour period. At least eight (8) hours shall be allowed them off duty before said engineers, firemen, conductors, trainmen, operators and agents acting as operators, are again ordered or required to go on duty: provided, however, that nothing in this Section shall be construed to allow any engineer, fireman, conductor or trainman to desert his locomotive or train in case of accident, storms, wrecks, washouts, snow blockade or any unavoidable delay arising from like causes, or to allow said engineer, fireman, conductor or trainman to tie up any passenger or mail train between terminals. (Act approved February 5, 1907. Pgh. 1, 10th Sess. Chap. 5.)

"1742. Penalties—Any railroad company or superintendent, train dispatcher, trainmaster, master mechanic or other railroad or railway official who shall order or require any locomotive engineer, locomotive fireman, conductor, trainman, operator or agent acting as operator, to labor contrary to the provisions of Section 1741 (1) of this Act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than one hundred (\$100.00) dollars or more than five hundred (\$500.00) dollars, or by imprisonment of not less than thirty days, or more than sixty days in the county jail; and all railroad or railway corporations operating lines of railroads or railways in whole or in part in this State, shall be liable in damages for all injuries to any person or persons resulting from violations of the provisions of Section 1741 (1) of this Act. (Act approved February 5, 1907. Pgh. 2, 10th Sess. Chap. 5.)

"1743. Act not to Apply to Relief or Wreck Trains. The provisions of Section 1741 (1) of this Act shall not

apply to relief or wreck trains. (Act approved February 5, 1907. Pgh. 3) (10th Sess. Chap. 5.)"

The foregoing is self explanatory and on October 9th and 10th, 1909, Conductor A. P. Johnson, in the employ of the Northern Pacific Railway Company, was on continuous duty from 5 p. m. October 9th, to 12:25 p. m., October 10th, aggregating 19 hours and twenty-five minutes. Conductor Johnson was in charge of a train of empty sugar beet car out of Billings to be distributed in the beet growing territory, and pick up the cars loaded with beets and take them to the sugar factory at Billings, and as stated above, was in continuous service for 19 hours and 25 minutes, before being relieved from duty by the dispatcher.

The circumstances in this case would appear to indicate a violation of the Montana statute, and the case was tried before a jury in the District Court of Yellowstone County, February 19th, wherein the defendant railway company was found guilty of a misdemeanor and a fine of \$100.00 imposed by the court.

An appeal was taken to the Supreme Court of Montana, and on October 3rd, 1910, the verdict of the lower court was set aside and the case remanded for a new trial. The opinion of the Supreme Court states that the evidence is not conclusive that the railway company wilfully and intentionally required Johnson to work after 9 o'clock, A. M., October 10th, at which time his sixteen hours had expired, and that the fact that he did work beyond that time is not sufficient evidence to establish the guilt of the defendant, but that it must be shown that the orders given him by the defendant railway company required him to so work and be on duty for the full period as charged in the information, and if this is not proven, the verdict must be for the defendant.

In brief, the view taken by the Supreme Court holds that notwithstanding that Conductor Johnson was on duty in excess of sixteen hours, there is no evidence to show that the defendant railway company intentionally required him to so remain on duty in violation of the sixteen-hour law.

The case will not be re-tried in the lower court.

Subject: Hours of Labor.

John Baird,

vs.

Chicago, Milwaukee & Puget Sound Railway Company.

On February 12th, 1910, the above named made complaint to the Commission that telegraph operators at the stations of Jefferson Island, Three Forks and Lewistown on the Chicago, Milwaukee & Puget Sound Railway, were required to work in excess of the number of hours provided for operators handling train orders under the federal law.

A letter addressed to Mr. Baird at Butte acknowledging receipt of his complaint was returned by the postoffice department unclaimed.

Investigation shows that during the month of February, employes in telegraph service at the three stations named, did not work a sufficient number of hours in any twenty-four hour period to constitute a violation of the law.

Subject: Hours of Labor Law.

Perry A. Merckel,

vs.

Northern Pacific Railway Company.

Perry A. Merckel of Missoula, Montana, reported to the Commission that on June 28th, 1909, Mrs. M. J. Sohn, a telegraph operator employed by the Northern Pacific Railway Company at East Missoula office, was required to work continuously from 8 a. m. until midnight, sixteen hours, claiming that such continuous labor was a violation of the Hours of Labor Law.

Section 1741 of the Revised Codes of Montana provides that trainmen, operators, and others shall not be required to work to exceed sixteen consecutive hours, and the case in question was, therefore, not a violation of the Montana statute, which is similar in character to the Federal law, making certain additional provisions which limit the hours of telegraph operators handling train orders to nine hours.

The case was, accordingly, referred to the United States District Attorney for such investigation and action as might be deemed expedient, and on December 14th, that official reports that he has fully investigated the matter, and is satisfied that the railway company did not wilfully violate the law, but that the operator in question was unavoidably detained on duty beyond nine hours, owing to another operator who should have reported for duty at 4 p. m. becoming intoxicated. Mrs. Sohn was instructed not to take any train orders after 7:45 p. m.

This complaint has been closed, as the result of investigation shows clearly that the alleged violation of the law comes well within the exception provided, "In case of emergency."

INSPECTION TRIP.

The Commission's first annual inspection trip of railroads and railroad properties within the state is briefly referred to on Page 272 of our report for 1909, wherein it is stated that inspection of the Chicago, Burlington & Quincy had not been made at the time this report was issued, but arrangements made to go over that line Monday, December 20th. This, however, we were unable to do, as a few days prior a very heavy fall of snow throughout eastern Montana and northern Wyoming made it inadvisable to attempt an inspection at that time. The date was, therefore, postponed, and on April 6th, 1910, an inspection trip was made over all tracks of the C., B. & Q. in Montana in company with General Superintendent E. E. Young, Division Superintendent R. G. Robbins, and A. K. Griggs, counsel. The trip covered the lines between Huntley and Parkman and between Toluca and Frannie, distance traveled 409 miles.

The principal object in making the trip at this time was to consider the proposed action of the Burlington company in abandoning their line between Toluca and a point about two miles south of Scribner, and from the latter point building a cut-off to connect with the Northern Pacific Railway at or near Fromberg, thus shortening the route between Scribner and Billings approximately 60 miles.

The line which it is proposed to abandon, with the exception of a few miles, is within the boundaries of the Crow Indian Reservation, and is totally undeveloped, there being no towns between Toluca and Scribner, no agriculture, no stock raising; in fact, nothing except a few scattered Indian settlements. This region affords no tonnage for the railroad, and the statements furnished the Commission showing the total revenue as well as the cost of operation and maintenance are conclusive that the line in question is and has always been operated at a financial loss, and after taking into consideration all of the conditions, physical, financial and otherwise, the Commission has issued permission to the said C. B. & Q. to abandon its line between the points mentioned. This, however, not to be done until the new line connecting with the Northern Pacific at or near Fromberg is complete and in operation. (See Report and Order of the Commission No. 34.)

Inspection of other lines of railroad within the state has not

been made this year in the same manner as in 1909, owing to lack of appropriation to cover the expense. The Commission is unanimous in the opinion that much benefit can be derived from an annual inspection of all lines of railroad, **jointly by all members** of this Board, in order to keep in close touch with the new work and improvements on the various roads, which naturally have a considerable bearing on the service rendered by the carriers in general.

ELECTRIC HEADLIGHTS.

Pages 275, 276, 277, Annual Report for 1909, touch briefly on the advantages and presumed additional safety by the use of electric headlights on all road engines, both freight and passenger, as required by enactment of the Eleventh Legislative Assembly, Chapter 18, Laws of 1909. This law became effective one year after its passage, or February 16th, 1910.

Report for 1909, under this caption, states in part: "In all fairness to the electric headlight and the railroad companies, this Commission has not yet seen nor read anything to substantiate the contention that the general use of electric headlights is a menace to safety, but on the contrary, while it is true that it is hard to gauge the distance of an approaching train, there are, in our opinion, many things in its favor, sufficient to commend its general use in road service, particularly the distance at which obstructions on track may be detected and the train brought to a standstill before running into a washed out bridge, fallen trees, landslide, cars running out onto the main line, stock, fouled switches, broken rails, malicious mischief, and the many causes of wrecks by night."

This Commission has since the advent of the electric headlight, endeavored to obtain the unbiased opinion of the men who were actually engaged in engine service, and while the information thus obtained was in practically all cases given without the object being even surmised, it is safe to say that not one engineman in fifty with whom representatives of this Board have conversed, expressed anything but the greatest appreciation of the additional safety afforded by its adoption.

Just as an illustration, a well known engineer when asked the question recently, "How do you like the electric headlight, Joe?" replied, "Fine. I always did think it was the only thing, and I can tell you it saved me from going in the ditch the other night. There was a broken rail and I got my eye on it just as we hit the straight track this side of the section house. The end of that rail was sticking up about four inches and when the light struck it, it looked bright as a piece of new tin. I stopped and me and the fireman got down; there she was, broke all right. Yes, sir, I like the electric headlights, you-bet-cha."

The above is only one of many similar expressions of opinion, and since the electric headlight has come into general use in

this state there has not been one single accident reported to this Commission the cause of which was attributed in any way to confusion resulting from "too bright a light" which a year ago was regarded by its opposition as an element of danger, alleging inability on the part of an engineman to discern the position of other trains or distinguish the color of signals. Theoretical objections to its use have not up to this time been sustained in actual practice.

INDEX.

PART I, STATION AND TRAIN SERVICE.

Page.

Acton, depot and agency	21
Belgrade, stopping train No. 41	15
Benchland, station and agency	10
Between Scribner and Toluca, C. B. & Q. R. R., discontinue operation..	6
Chestnut, stopping train No. 8	16
Conrad, reporting passenger trains	22
Deborgia, station and agency	12
Dorsey, closing station	27
Elkhorn Branch, train schedule	9
Fielding, closing station	25
Fortine, closing station	26
Glasgow, reporting passenger trains	8
Heron, stopping train No. 7	15
Hingham, closing station (contemplated)	27
Logan, passenger train connections	24
Lombard, train connections N. P. and C. M. & P. S.	12
Meyers, agency and station facilities	23
Noxon, stopping train No. 7	15
North Coast Limited, local work	20
Park Branch, N. P. R'y. train service	3
Paradise-St. Regis cut-off, train service	13
Piedmont, interchange N. P. and C. M. & P. S. R'y.	11
Plains, passenger train service	24
Plevna, agency	18
Power, platform	14
Quebec, train service and agency	14
Rainbow, closing station	26
Rimrock, closing station	25
Stockett-Sand Coulee Branch, G. N. R'y., passenger train service	17
Three Forks, stopping train No. 7	16
Thompson Falls, stopping train No. 7	15
Thompson Falls, passenger train service	24
Townsend, passenger train service	19
Warland, stopping train No. 3	8
White Pine, stopping train No. 7	15
Wibaux, stopping train No. 3	10

PART II, RATES AND MINIMUMS.

Anaconda Copper Co., rate on coal	67
Burrell, Alex., alleged overcharge	78
Butte Potato & Produce Co., minimums on baled hay	69
Caird, C. S., rate on scrap iron	79
Carbon Mercantile Co., refund of overcharge	66
City Express & Coal Co., Dillon, alleged overcharge	61
Coal, rate Butte to Dillon	60-79
Coal, rate Helena to Fort Harrison	57
Coal, rates from Japan	81
Coal, rates, M. W. & S. R. R., Order No. 22	33
Coal, rates to Shields River Branch Station	81
Coal, rates to Washington points	76
Dillman, Ora, refund of overcharge	56
Dorchester, A. J., alleged overcharge	62

INDEX.

	Page.
Elwell, Ross, refund of overcharge	63
Express rates all companies, Order No. 36	36
" " " " " " 36-A	45
" " " " " " 38	47
Frame, A. R., alleged overcharge	71
Haab, John J., refund of overcharge	78
Henningsen Produce Co., refund of overcharge	63
Jellison Lumber Co., overcharge	59
Keene, H. L. & Son, refund of overcharge	78
Larsen, Jens L., refund of overcharge	75
Lindsay & Co., rate on seed grain	70
Lindsay & Co., refund of overcharge	66
Manchester, P. H., minimums on baled hay	69
Montana Elevator Co., rate on wheat screenings	68
Montana Hardware Co., Lewistown, rate on seed grain	65
Mungas, Mike, rate on ties	64
Norman, L. W., refund of overcharge	64
Peterson, A. T., alleged overcharge	62
Refund of freight charges, C. M. & P. S. R'y.	50-51
" " " " Nor. Pac. R'y	52
Regulation to govern the issuance and transmittal of tariffs, express companies	31
Ryan, Geo. W., refund of overcharge	54
Stone, rate Fields and Flood to Black Eagle and Great Falls	58
Stranahan, C. R., alleged overcharge	67
Stucco and gypsum, rate to Great Falls	80
Thompson, H. R., rate on coal	74
Whistler, Fred D., rates on wood	77-82
Whittaker, Mrs. S. W., refund of overcharge	72
Woolverton, E. W., refund of overcharge	77

PART III, TRAIN ACCIDENTS AND PERSONAL INJURIES.

Accidents, tabulated	85
Collision, Nov. 12, 1909, Havre, G. N. R'y	85
" Dec. 31, 1909, Oxford, G. N. R'y.	88
" April 14, 1910, Toluca, C. B. & Q. R. R.	93
" June 9, 1910, Frenchtown, N. P. R'y.	94
" June 11, 1910, Browning, G. N. R'y.	95
" Aug. 3, 1910, Bombay, G. N. R'y	96
" Oct. 15, 1910, Browning, G. N. R'y.	99
Derailment, Dec. 20, 1909, Volcour, G. N. R'y.	87
" March 4, 1910, Eddy, N. P. R'y	92
" Aug. 21, 1910, Rudyard, G. N. R'y	98
Explosion, Dec. 16, 1909, Eng. 476, C. M. & P. S. R'y.	86
" Sept. 20, 1910, Eng. 1565, N. P. R'y	98
Run-away, Feb. 19, 1910, Butte Mountain, G. N. R'y.	90

PART IV, DEMURRAGE.

Rules and Regulations, Report and Order No. 39	103
" " " Supplement to Report and Order No. 39	111

PART V, MISCELLANEOUS.

Alhambra, alleged discrimination	141
Blocking public highway, Toston	125
Butte, switching service	129
Dangerous condition, Cut Bank	142
Delay in Transit, M. G. Wright	139
Delay in Transit, Helena Fuel Co.,	127
Demurrage, Schuler Bros	137
Demurrage, The A. W. Miles Co.,	128

INDEX.

	Page.
Docks and Wharves, Report and Order No. 37	122
Electric Headlights	151
Fence, right of way, C. H. Pearson	133
Glendive, switching service	134
Grain doors for use in Coal Service, Report and Order No. 35	119
Hay shipments, Beebe Grain Co.	136
Hinsdale stock yards	140
Hours of labor law	145, 147, 148
Huntley, Switching charge	132
Inspection, annual	149
Missing train, Dr. A. M. McCauley	129
Montana, Wyoming & Southern R. A., service in general, Report and Order No. 33	115
Railroad construction	143
Road crossings, Frederick Root	130
“ “ J. F. Saville	130
“ “ C. E. Anderson	138
“ “ J. R. Larimer	139
Routing error, Geo. H. Town	135
Sixteen hour law	145, 147, 148
Stock, delayed in transit, Thos. Flynn	128
Stock killed, C. E. Brown	127
“ “ F. E. Bockman	131

